Public Utilities

FORTNIGHTLY

July 17, 1941

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¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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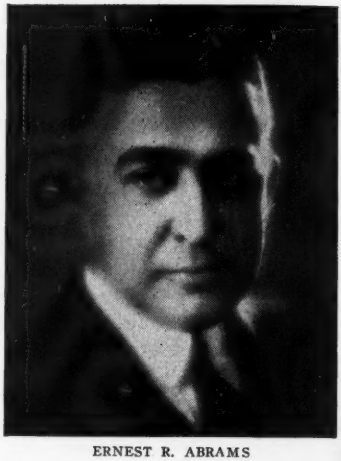
Pages with the Editors

In all this summer heat and international crisis, a few days ago the journalists had to go out of their way, up to the Bronx Zoo in fact, to pester a middle-aged lady elephant. We would not bother with this business ourselves were it not for the fact that the resulting newspaper story cast aspersions upon the telephone industry. We rise in editorial righteousness to defend that worthy service.

It appears that the latest hot-weather stunt of the newspapermen was to try to prove that Alice, a forty-four-year-old elephant, did or did not have the traditional long-range memory associated with the sagacious pachyderm. To do this, a keeper nailed an oversized but entirely inactive telephone on a tree. Then he rang a phony bell, picked up the receiver and shouted "Hello" — "Who?" — "You want Alice?"—"Hold the Wire."

Alice had learned this trick in the circus when she was a mere kid of fourteen. But with one thing or another, she had given it up, probably in disgust. Anyhow, on the attempted encore, after the 30-year interim, Alice simply looked at the keeper coldly. Then she turned around and began eyeing the audience, perhaps wondering if there were one lousy peanut in such a crumby looking crowd. This was supposed to prove that elephants do not have the memories with which legend has endowed them. Either that, or Alice is an elephantine half-wit. That was the way the reporters wrote up the incident in the newspaper.



ERNEST R. ABRAMS

The proof of the SEC pudding will be in the bidding.

(See Page 67)

THOMAS F. DOYLE

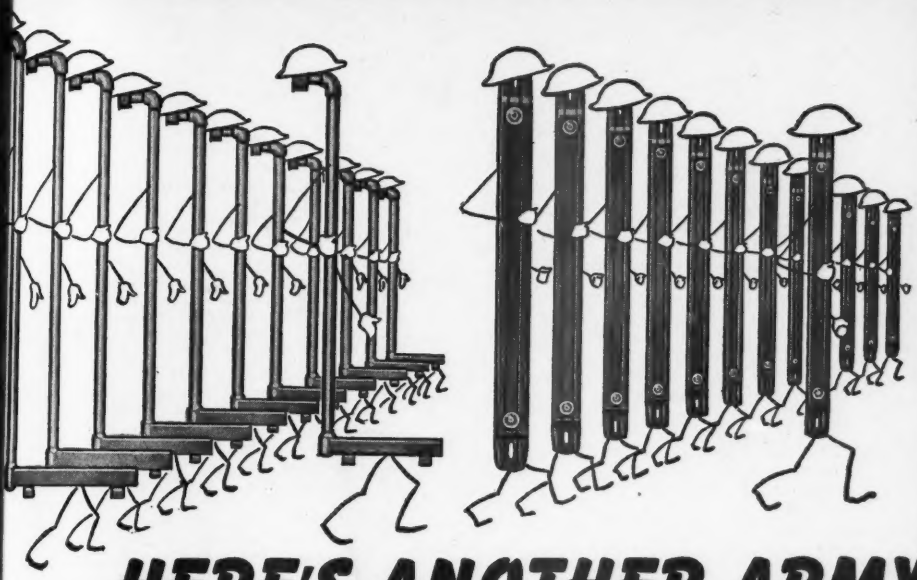
The mills of the SEC are grinding exceedingly small; and not so slow either.

(See Page 75)

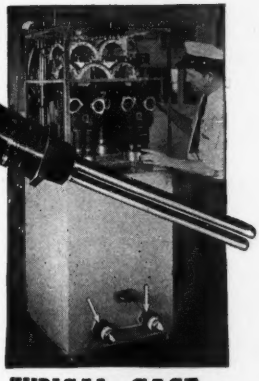
But we feel that this does an injustice to both Alice and the telephone as a great modern invention. First of all, maybe Alice's feelings have changed about the telephone. Many of us do things at fourteen that we would not feel like repeating at forty-four. Again, why didn't they give Alice some real telephone service? It is hard to blame even a long-suffering elephant for getting just a bit weary of answering the telephone time after time and hearing nothing but her own blood pressure pounding in her ear.

Alice probably remembered all those false alarms and was resolved not to bite on the same old gag. We suggest that if the Fourth Estate boys want to do something constructive they might rig up a real elephant-sized telephone. This should be connected to the regular Bell system. Furthermore, they should give her something to listen to. Results might show that Alice is not so dumb after all. We

ndustry needs MORE ELECTRIC HEAT
o speed up the Defense Program . . .



HERE'S ANOTHER ARMY ON THE MARCH!



TYPICAL CASE

The power company and local Wiegand engineer co-operated in developing this portable electrically heated cleaning tank for an aircraft manufacturer.

Marching steadily into manufacturing industries—particularly the defense industries—Chromalox electric heating units in ever-increasing force are helping to win the Battle of Production.

These quickly installed units are speeding output everywhere, showing shop executives new, effective ways to put more KW's to work, thus building profitable load for utilities.

Chromalox units in type, size, capacity and form for every conceivable industrial heating requirement, backed by skilled Wiegand electric heating engineers located in twenty-eight leading centers, cooperate with you to increase the productive capacity of your industrial customers—and to put more KW's on your lines.

Call the local Chromalox representative, or write us direct.

EDWIN L. WIEGAND COMPANY
7500 THOMAS BLVD. • PITTSBURGH, PENN

CHROMALOX

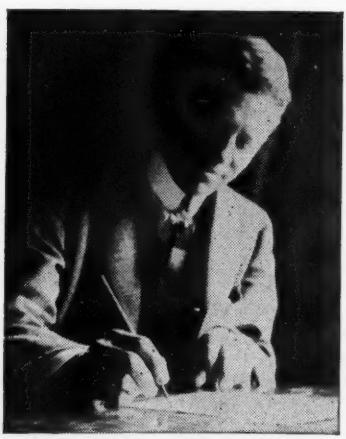
The load builder

have yet to encounter a female who can resist the receiving end of a telephone if something really worth while is coming over the wire.

ANOTHER story of frustration and futility, connected with a great communications industry, reached us on the eve of July 1st, when commercial television officially went on the air. (See page 93.) The Columbia Broadcasting System had been authorized by the FCC to use certain television channels on condition that the company broadcast fifteen hours of regular programs a week. Unfortunately, CBS's channel No. 2 (previously used by the Army) is one which cannot be received by the relatively few television receiving sets now outstanding in the hands of the public. Most of these sets are tuned to channel No. 1, which is the domain of the National Broadcasting Company.

FURTHERMORE, such sets are not likely to be adjusted to receive the CBS programs. Both technicians and materials to make such adjustment are too much needed in all-out aid for national defense. For that matter, the nation's defense effort has absorbed so much of the radio industry's time that in a short while there will not be *any* television sets available for sale to the general public. The result is that the CBS is faced with the necessity of going through the motions of performing plays which will not be seen by anybody except the few CBS employees. It must either do that or lose rights to No. 2. Talk about roses born to blush unseen and wasting fragrance on the desert air!

JUST to fill in the time, CBS has scheduled a series of television scenes showing etchings. In the field of sports, expert sporting instructors will teach nobody how to drive a golf ball, hold a tennis racquet, wrestle, etc. For all the good it will do for the world at large, CBS might just as well be using its television cameras as kibitzers at one of the regular pinochle sessions in the rathskeller of the Elks Club. But the FCC might decide such a program was not entirely according to Hoyle. Anyhow, CBS is manfully resolved to go through an interminable program of instructing nobody, educating nobody, entertaining nobody, without any prospect of monetary return. Officials say, somewhat wistfully, that it will probably be "good practice."



FRANK M. PATTERSON

Will national defense require the government to suspend "flood control as usual"?

(SEE PAGE 85)

ANOTHER recent unsatisfactory operation which a utility company went through in deference to regulatory authority, was the holding of competitive bids on certain securities by an eastern gas and electric utility. This was all because the SEC planned it that way. But when the bids were opened there were not any bids—at least for one class of security offerings—which resulted in making it necessary to call the whole thing off.

IN all fairness, it should be stated that a subsequent test of the competitive bidding rule by another utility was quite satisfactory. So the results of these tests at this writing are inconclusive. This gives us a chance to present an analytical article on the same subject by ERNEST R. ABRAMS, well-known author of "Power in Transition" and a frequent contributor to business periodicals. MR. ABRAMS' article on "competitive bidding" is in two parts, the first of which appears in this issue.

THOMAS F. DOYLE, whose article on the so-called "death sentence" begins on page 75, is a newcomer to the FORTNIGHTLY. For the past ten years he has been associated with a large public utility system in advertising and publicity work. MR. DOYLE is a former newspaper man who has traveled in Europe and South America. His interest in electric utilities dates back to news reporting days, when the Shannon electrification system in Ireland was being constructed.

FRANK M. PATTERSON, whose article begins on page 85, is a noted consulting engineer of Chicago. An alumnus of the University of Iowa, MR. PATTERSON entered the valuation bureau of the ICC in 1914 after engineering experience with the CB&Q Railroad Company. In 1925 he left government service to take up editorial work and private practice in Chicago.

THE next number of this magazine will be out July 31st.

The Editors

In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

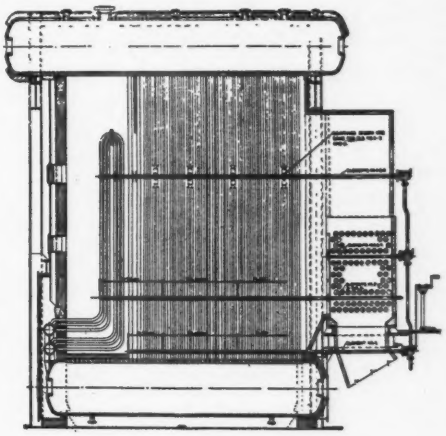
In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 257–320, from 38 PUR(NS)

Another Example of VULCAN VERSATILITY *in Soot Blower Design*

Vulcan unit makes notable 4 year record in latest design, twin furnace Foster Wheeler steam generator installation at Oil City, Pa., station of the Keystone Public Service Company, operating on fuel relatively high in ash having a low fusion point.



Vulcan unit in twin-furnace Foster Wheeler steam generator completes 4 years' service with NO TROUBLE AND NO MAINTENANCE.

... This despite unusual problems presented by novel boiler and furnace design.

... As the drawing shows it was impracticable to install soot blowers from the front of the boiler as the furnace construction precluded installation of conventional type of elements and bearings to provide necessary protection and support.

... Hence, entry was made at the back necessitating carrying the elements a distance of about 26 ft., through the economizer and boiler tube banks to the superheater.

... Passage through high temperature, intermediate temperature and relatively low temperature zones, plus the factor of exceptional length, greatly complicated the problems of securing adequate thermal protection, dependable support, and at the same time provide for expansion and contraction without danger of cutting tubes.

Solution was found by using HyVULoy element section for the high temperature area, VULcrom element for the intermediate, with the balance steel; and providing specially designed bearings to hold the members in such a way as to eliminate hazard of tube-cutting and directed expansion toward the back of the boiler, where it could be taken up by a suitable expansion joint.

... Because of the advanced design of this boiler involving new features in soot-blower design and construction, Vulcan engineers inspected the installation monthly for many months, but the engineering was so sound that no trouble of any kind developed—Results—Perfect Operation—Perfect Cleaning—Reasonable Cost—And—VULCAN SOOT BLOWERS WERE SPECIFIED when a duplicate Foster Wheeler twin furnace steam generator was recently ordered by Keystone Public Service Company.

... Whatever the characteristics of your boiler and setting, fuel, or load, Vulcan engineers can successfully solve any soot blower installation and operating problem involved. We invite your consideration of Vulcan service with respect to any soot blower need.

VULCAN SOOT BLOWER CORPORATION

DU BOIS, PENNSYLVANIA

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

JESSE JONES
U. S. Secretary of Commerce.

"... when business clashes with government, it is usually its own fault."

MARK ETHRIDGE
Former president, National Association of Broadcasters.

"I came to feel strongly sometime ago that the Federal Communications law belonged to the 'horse and buggy days.'"

HENRY I. HARRIMAN
Former president, Chamber of Commerce of the United States.

"A wise rewriting of our tax laws could probably do more to stimulate private enterprise than any other one thing that could be done."

DANIEL W. BELL
Under-Secretary of the Treasury.

"The more spent by government agencies, whether Federal, state, or local, on nondefense purposes, the less of the national income will be left for defense."

CARTER FIELD
Journalist.

"No person believes that a Senator who would filibuster against the St. Lawrence seaway would be guilty of treason, or would really be impairing the war effort."

CLARE E. HOFFMAN
U. S. Representative from Michigan.

"If once it be admitted that the unions, the Communists, industrialists, or any group of citizens, can stop defense production in even the slightest degree, then the nation has surrendered its right of self-preservation."

Excerpt from report of Industrial Securities Committee, Investment Bankers Association.

"It is unnecessary to point out that the ability of the RFC to short-circuit completely the cumbrous registration machinery of the SEC gives it another tremendous advantage in competition with our [investment banking] industry."

ROBERT H. JACKSON
Former Attorney General of the United States.

"Any nation that in the presence of rising hostility and strain with another awaits a declaration of war to assert itself is as naïve as a citizen who expects a burglar to make a formal call to announce his house-breaking intentions."

FRANKLIN J. GRIFFIN
Boston investment banker.

"There seems to be developing in this country a definite hostility to success in the corporate field, especially if the stigma of monopoly can be imputed to that success. The continued growth of this view could have fateful repercussions upon the utility business."

GEORGE D. AIKEN
U. S. Senator from Vermont.

"The United States government, in spite of the tremendous increase in revenue, will fall short of paying current expenses of government, exclusive of defense costs, by over $2,000,000,000."

ROBERT M. LAFOLLETTE, JR.
U. S. Senator from Wisconsin.

"Those who have tried to make labor the scapegoat in this production crisis had best look elsewhere if they really are serious about discovering the human bottlenecks in defense production."

SUMNER T. PIKE
Member, Securities and Exchange Commission.

"We [SEC] shall be alert that utility financings for additional facilities are reviewed from the standpoint of national defense priorities of materials and equipment and the availability of labor."

CHARLES EVANS HUGHES
Former Chief Justice, United States Supreme Court.

"'Democracy cannot escape its pressure groups. Each interest has its imperious demands. These groups compete in the market place, in the forums of public opinion, in popular elections, and in our legislative halls, but they have no place in the halls of judicial administration."

CHARLES H. LEAVY
U. S. Representative from Washington.

"Were it not for the exceptional foresightedness of President Roosevelt in directing the construction of these two giant projects [Grand Coulee and Bonneville dams] back in 1933, we would find ourselves today so crippled by a shortage of electrical energy that our present airplane construction program would be impossible."

GEORGE A. RENARD
Secretary-treasurer, National Association of Purchasing Agents.

"The limited demand and curtailed production of the past several years are history. The situation today requires a new attitude and plenty of action. We don't need sales or business for 1941; we need more and more production to meet the demand already here and growing daily through expansion of purchasing power caused by the defense program."

EDITORIAL STATEMENT
Traffic World.

". . . the one great need of the times in transportation is a realization on the part of the railroads, whether they like it or not, that motor transport has come to stay and that it performs a valuable function. If that is true, the business thing to do would be for both motor and rail transport to look with favor on coördination of their services."

FRANKLIN DELANO ROOSEVELT

"Free speech is an undisputed possession of publishers and editors, of reporters and Washington correspondents; still in the possession of magazines, of motion pictures, and of radio; still in the possession of all the means of intelligence, comment, and criticism. So far as I am concerned it will remain there for that is where it belongs."

Features

Total Steam Capacity of Open-Pass Boilers in service and on order over 12,000,000 Pounds per Hour

THE BOILER

This boiler has no convection tube-bank, but has effective heat-absorbing wall surface in the furnace and open passes. Adequate water circulation conditions, minimized water-level fluctuation, and minimum of solids carry-over are assured by cyclone steam separators and steam scrubbers. Downcomers are not exposed to heat. Complete unit is top supported—arranged for downward expansion, with minimum air leakage. The steam-and-water drum is protected from hot gases, thus minimizing expansion strains in shell and tube joints. All surfaces in contact with the gases can be inspected in operation.

THE FURNACE

Down-firing against the slag-tap floor maintains a hot furnace, efficient combustion with low carbon loss, and continuous slag discharge over a wide range of load with varying coals. High rates of heat absorption prevail. Water-cooled furnace walls withstand severe combustion conditions and remain gas tight. The partially studded walls become covered with molten slag, which maintains an equilibrium thickness for the temperature in the furnace. The slag coating is retained throughout shut-down periods, thereby assuring more uniform conditions as to combustion efficiency, superheat temperature, and ash handling.

FIRST OPEN PASS

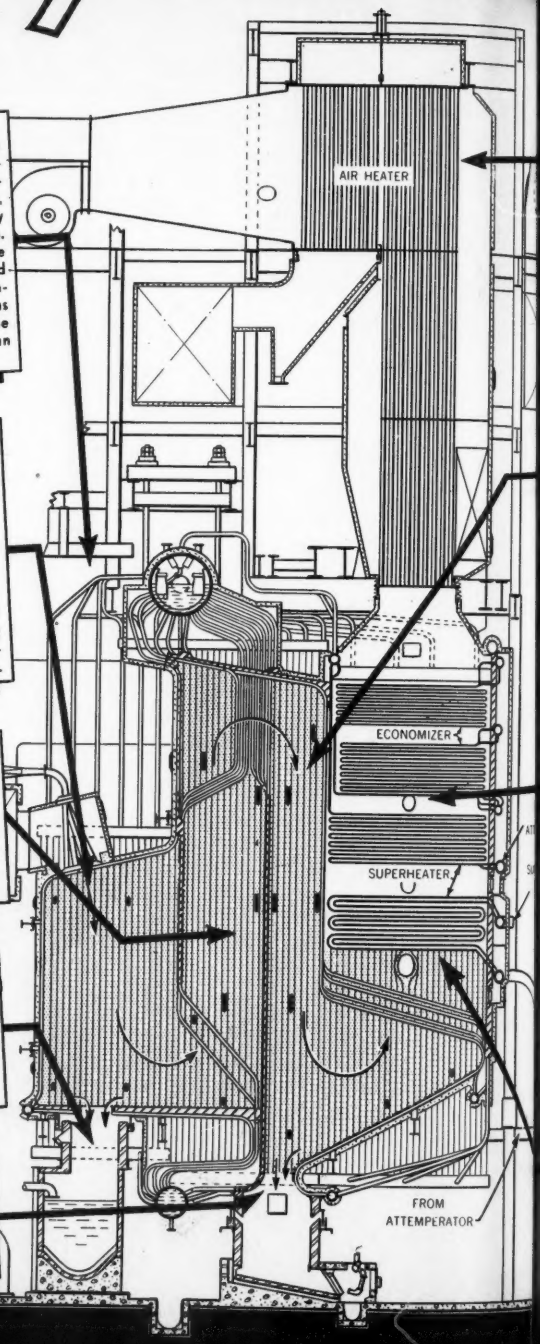
The first open pass is a chamber for the unrestricted flow of gases. Screen tubes crossing the entrance are on wide centers to prevent trouble-some slag accumulations. At normal rates, molten slag particles carried in the gases deposit on the walls and screen tubes and flow to the furnace floor for removal with the molten slag from the furnace.

MOLTEN-SLAG REMOVAL

More ash is recovered in the furnace of this boiler than in conventional slag-tap furnaces. During operation, ash particles suspended in the gases are trapped in the molten slag that flows down the walls of the furnace and the first open pass onto the furnace floor and out through the discharge openings.

DRY-ASH REMOVAL

Dry sponge ash is continuously removed from the second open pass by the scrubbing action of the high downward velocity of the gases and, assisted by gravity, drops through a cooler zone at the bottom of the pass into the dry-ash hopper.



recommending

The OPEN-PASS BOILER

AIR HEATER

The air heater is of the tubular type with air flow counter to gas flow and across the tubes in multiple passes for high heat absorption. The heater has no moving parts. The gas passages contain no pockets that would cause sluggish circulation at low rates. Tube size and arrangement give economic balance between heat transfer and fan power. All heating surfaces are of substantial construction and easily cleaned. Specially designed seal minimizes leakage of air to gas, with corresponding savings in first cost and operation, including fan power and maintenance. A short-tube section is sometimes used in the cool-gas zone to minimize maintenance due to corrosion at unusually low rates of operation. Heater may be horizontal, vertical, or otherwise arranged to meet space limitations.

SECOND OPEN PASS

Transition of gases from first to second open pass is effected through widely spaced groups of division-wall tubes. In this transition stage and in the second open pass the gas temperatures are reduced so that ash particles pass from the sticky plastic condition to the dry solid state. Sponge ash that deposits on the walls is removed by the scrubbing action of the high-velocity gases assisted by gravity action. The water-cooled division walls are self-cleaning and have high heat-absorbing capacity, which is fully utilized with gases on both sides.

SUPERHEATER AND ECONOMIZER

Superheater and economizer are self-draining and so located that they are accessible for inspection and cleaning. The full length of the tubes can be inspected from the rear through conveniently located clean-out doors. All tubes are continuous and arranged for cross flow of gases. Each section permits spacing of tubes to meet individual requirements—wide spacing in the lower sections as a further precaution against tube fouling and closer spacing in the upper sections to obtain desirable heat absorption. Superheat is controlled over required load range by either attemperator or gas bypass. Headers are outside the setting, and inner supports attached to water-wall tubes are thus amply protected against overheating.

PREVENTION OF TUBE FOULING

External fouling of convection heating surface is prevented by the combined effects of several features of the Open-Pass Boiler. The tubes are on wide spacing. Ash of low fusing temperature is collected in molten form by the primary furnace. Some of the dry ash drops into the hopper below the superheater, and the remainder is relatively harmless and readily removable with soot blowers. The temperature of the fly ash entering the superheater bank is cooler than in many other types of boilers. Superheater and surfaces in open passes are shielded by the division walls from the radiant heat of the furnace. Long open passes and changes in direction of the high-velocity gas flow mix the gases and equalize the gas temperature across the superheater, thus avoiding lanes of higher-than-average temperatures that commonly cause fouling.

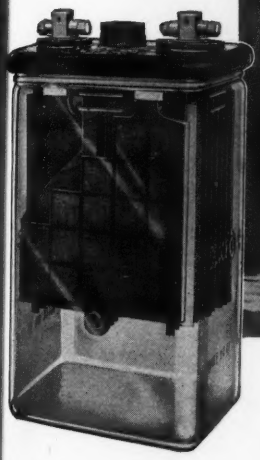
The illustration on the opposite page shows the B & W Open-Pass Boiler, which has demonstrated its soundness and its applicability to a wide variety of installations and operating conditions.

Some distinctive features that enable this boiler to meet required operating conditions over extended periods, with minimum operating labor and upkeep, are indicated on the drawing.

THE BABCOCK & WILCOX COMPANY
85 LIBERTY STREET . . . . NEW YORK, N. Y.

GI

BABCOCK & WILCO



DEPENDABILITY . . . IN EMERGENCY OR IN ROUTINE SERVICE

THE dependability of the telephone employee has become one of America's traditions. Over and over again, in the face of danger from fire, flood or other destructive force, these courageous workers have displayed a loyalty far beyond the actual call of duty.

Dependability is a part of the fabric of the daily lives of every man and woman engaged in telephone work. And dependability is equally an essential basic part of the equipment on which telephone companies rely.

That is why Exide Batteries are found in so many small and large telephone exchanges or, in fact, throughout all the utilities where truly dependable battery power is required for *any* purpose.

Exide
CHLORIDE BATTERIES

THE ELECTRIC STORAGE BATTERY CO.

The World's Largest Manufacturers of Storage Batteries for Every Purpose

PHILADELPHIA

Exide Batteries of Canada, Limited, Toronto

DITTO D-44

League Boots for Your Report Operations!

...ty routines that lagged now seem to take wings ... Ditto. It's the same as hiring extra help, without ...cost!

...cause of new lightning-fast automatic electric ... new long runs, and new all-over brightness of ...es, the Ditto D-44 is speeding whole opera- ...—releasing executives and workers alike for ... important duties.

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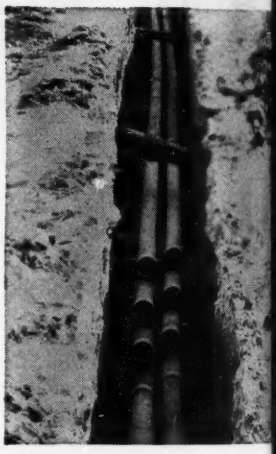
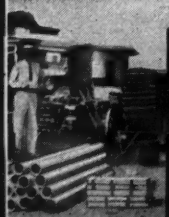
High Thermal Conductivity of Johns-Manville Transite Ducts dissipates heat more quickly . . . either cuts copper losses or increases capacity.

CABLE OPERATION is improved wherever Transite Ducts are used. Made of asbestos and cement, they provide a high rate of heat dissipation. This means increased system capacity or lower cable-operating temperatures with resultant decreased insulation and I^2R losses and longer cable life.

What's more, you spend less on upkeep, for Transite Ducts can't rust, rot or burn. They effectively resist corrosion and do not soften, swell or blister. Their smooth bore *stays* smooth . . . makes cable removal and replacement as easy as initial installation. And because Transite Ducts come in long, light lengths with a complete line of fittings, jobs are finished quickly and economically. For details, write for brochure DS-410. Johns-Manville, 22 E. 40th St., New York, N. Y.



Because J-M Transite Ducts are made of asbestos and cement, less separation is required for effective heat dissipation and fire protection between cables.

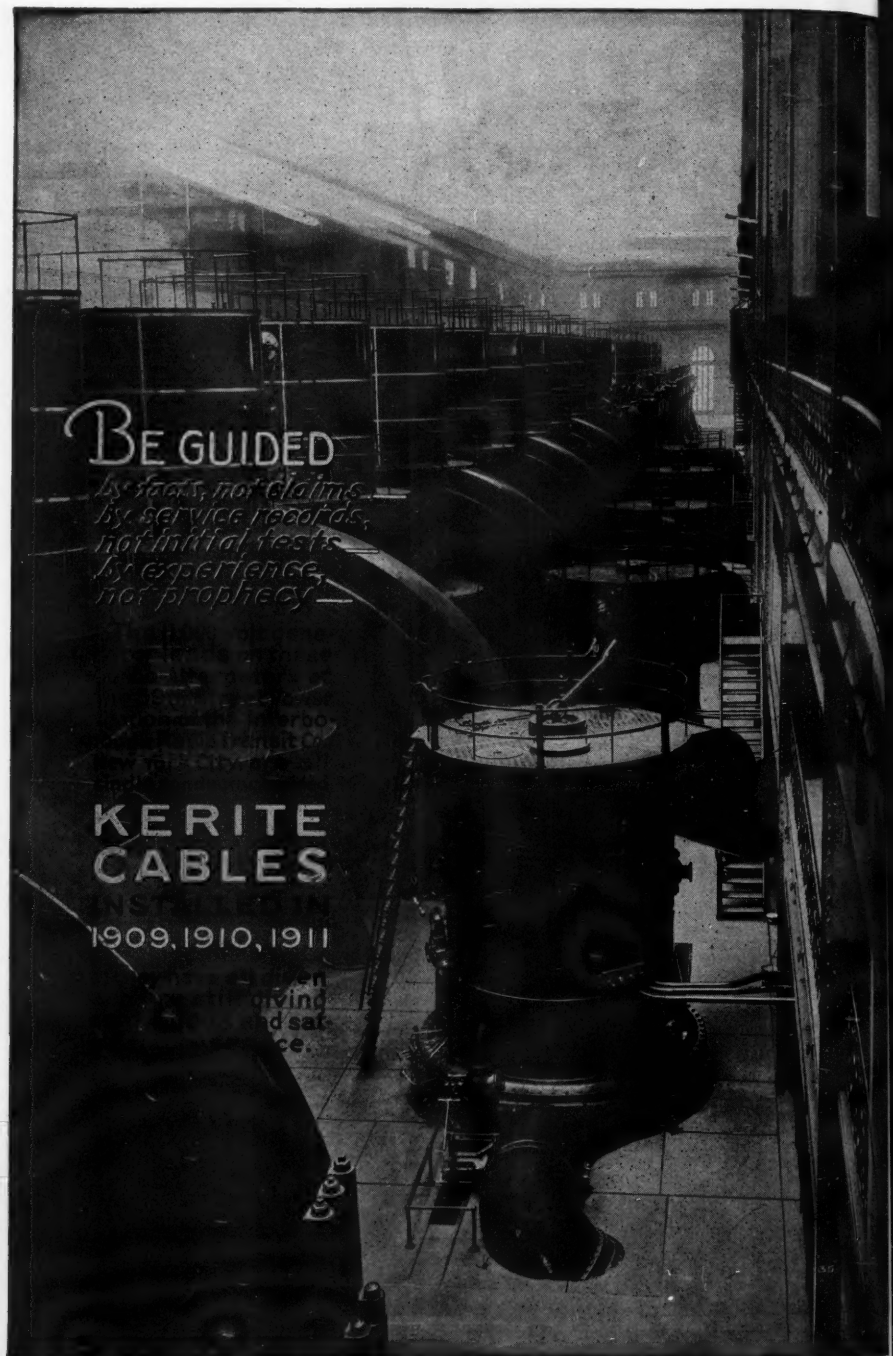


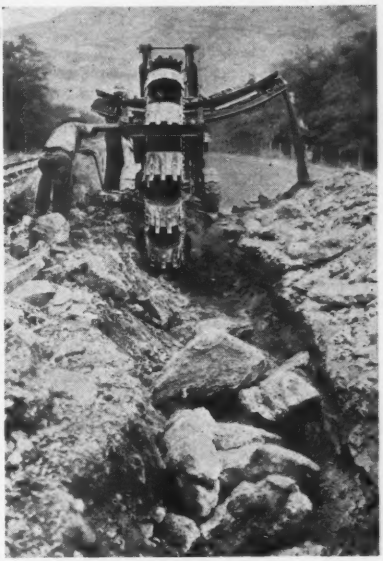
FOR EFFICIENT, LOW-COST SERVICE, SPECIFY...

Johns-Manville TRANSITE DUCTS

TRANSITE CONDUIT... For use underground without a concrete envelope and for exposed locations.

TRANSITE KORDUCT... For installation in concrete. Thinner walled, lower priced, but otherwise identical with Transite Conduit.





The Complete Answer

To Your Trenching Requirements—

THE CLEVELAND "BABY DIGGER"

MODEL "95"

Equally Efficient for Long Line Trench or City Distribution

Literally thousands of miles of completed work have proven the correctness of the "Baby Digger" design. The forerunner of all full-crawler trench excavators, the "Baby Digger" stands supreme as a compact, light weight, easily transported trencher. With it you have the best chance to machine dig your work. Compact, fast, flexible, powerful and with all dead weight eliminated, the "Baby Digger" exactly meets conditions, whether it's a cross-country transmission line or a short service extension in the city.

Easy to operate and transport and with the built-in qualifications to resist wear and abuse, the "Baby Digger" represents the utmost in economy and efficiency and assures maximum machine usage. Only the "Baby Digger" gives you such power, speed and strength and such a wide digging range in such a small package. Write today for complete details on this modern most usable "Cleveland."

A big time-saving "Cleveland" feature — Truck speed transportation on special trailers.

THE CLEVELAND TRENCHER CO.

"Pioneer of the Small Trencher"

20100 St. Clair Avenue . . . . . Cleveland, Ohio

Utilities Almanack

JULY

17	Th	¶ *Fourth Annual Appalachian Gas Measurement Short Course will be held, Morgantown, W. V., Aug. 18–20, 1941.*
18	F	¶ *International Association of Electrical Inspectors, Southwestern Section, will hold meeting, San Jose, Cal., Aug. 25–27, 1941.*
19	Sa	¶ *National Association of Railroad and Utilities Commissioners will hold annual convention, St. Paul, Minn., Aug. 26–29, 1941.*
20	S	¶ *American Institute of Electrical Engineers will hold Pacific coast convention, Yellowstone National Park, Aug. 27–29, 1941.*
21	M	¶ *Mid–West Gas Meter School and conference will be held, Ames, Iowa, Sept. 8–10, 1941.*
22	Tu	¶ *Pacific Coast Gas Association will hold annual convention, Del Monte, Cal., Sept. 10–12, 1941.*
23	W	¶ *Michigan Independent Telephone Association starts meeting, Lansing, Mich., 1941.*
24	Th	¶ *American Water Works Association, New York Section, will hold convention, Glens Falls, N. Y., Sept. 11, 12, 1941.*
25	F	¶ *National Association of Motor Bus Operators will hold meeting, Chicago, Ill., Sept. 17–19, 1941.*
26	Sa	¶ *Illuminating Engineering Society will convene, Atlanta, Ga., Sept. 22–25, 1941.*
27	S	¶ *Association of American Railroads, Telephone Section, will hold meeting, Cincinnati, Ohio, Sept. 23–25, 1941.*
28	M	¶ *American Transit Association will hold meeting, Atlantic City, N. J., Sept. 27–Oct. 2, 1941.*
29	Tu	¶ *National Safety Council will hold annual meeting, Chicago, Ill., Oct. 6–10, 1941.*
30	W	¶ *South Dakota Telephone Association will hold meeting, Sioux Falls, S. D., Oct. 8, 9, 1941.*

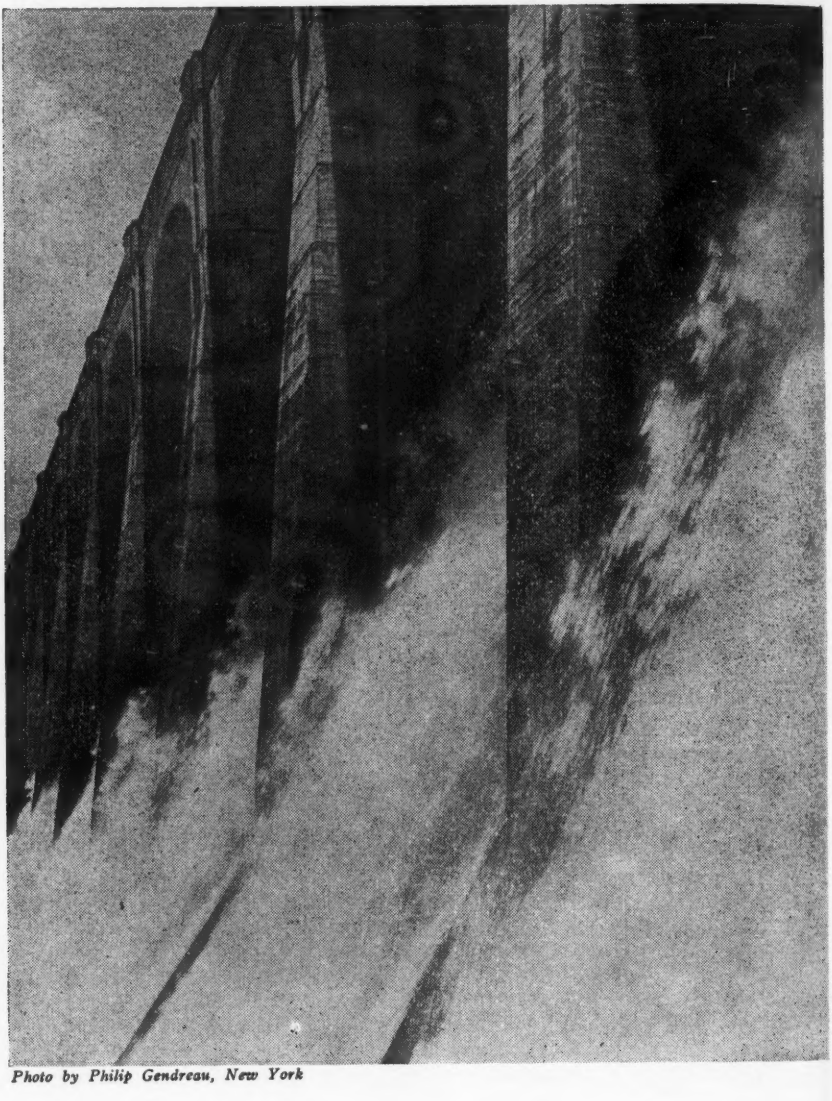


Photo by Philip Gendreau, New York

Flood Gates of the Wilson Dam
At Muscle Shoals

Public Utilities
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Competitive Bidding Problems

Part I. Mechanics and Procedure

This is the first part of an article dealing with questions which may arise as to the manner of compliance with the recent SEC rule applying to the issuance and sale of securities of reported electric and gas utilities.

BY ERNEST R. ABRAMS

WHEN the Securities and Exchange Commission promulgated its recent rule, requiring competitive bidding in the issuance and sale of securities of registered electric and gas utilities, it tossed into the laps of utilities and security underwriters alike some of the knottiest problems they have had to solve in a turbulent decade. Not that the requirement itself came as a surprise to them. Two SEC commissioners had advocated adoption of this underwriting device more than a year earlier, in an appendix to the Consumers Power decision, while the four commissioners participating in January's competitive bidding hearings in Washington gave ample indication of their preference for it. Rather, since the rule adopted by the SEC specified a destination but contained no road map, it is the manner and not the necessity of compliance that generates confusion.

Perhaps a brief summary of the commission's approach to the rule should precede discussion of these problems. Since the 1935 Holding

Company Act charged the commission with maintenance of arm's-length dealings between financing utilities and security underwriters, and with insuring economies in the raising of utility capital, the SEC first sought "to sift out in advance" and to "neutralize" those instances in which security underwriters stood in such relationship to financing utilities that arm's-length bargaining might be absent in their dealings, by requiring affirmative proof of the reasonableness of underwriting fees accruing from all but competitively underwritten issues, or by denying fees when an absence of arm's-length bargaining was found to exist. Between March 1, 1939, when this rule became effective, and May 7, 1941, the effective date of the competitive bidding order, this "sifting out" rule was the SEC's principal instrument for enforcing arm's-length bargaining.

But after the March, 1939, rule had been in force for nearly a year, the SEC found it was not proving effective in insuring the reasonableness of price or spread, or in maintaining arm's-length bargaining in the sale and distribution of utility securities. So in February, 1940, it directed its public utilities division to ask all registered holding company systems, state utility commissions, and the principal security underwriters of the country to suggest the method by which its mandatory objectives under the Holding Company Act might best be attained. And the public utilities division studied the sixty some replies to this questionnaire for more than eight months before, in December, 1940, it submitted to the commission its findings and a recommendation of the promulgation of a competitive bidding rule.

THIS report, too, was sent to all registered holding companies, to various regulatory bodies, and to leading investment bankers, with requests for comments and suggestions. In response to widespread appeal, the findings of the utilities division, and the competitive bidding rule it proposed, were discussed for four and a half days by some two hundred persons of varied affiliations, and from every section of the land, at a public conference in Washington. All shades of opinion were reflected at the public hearings and in written comments to the commission. And the SEC gave special consideration to an alternative to the rule, proposed by the Investment Bankers Association. Two months after the close of public hearings, the commission reached its decision and promulgated a competitive bidding rule, substantially in the form outlined by its public utilities division.

Many will question the wisdom of its decision. Some will contend that the SEC has needlessly hamstrung our established capital supply system in a period of national crisis, and has seriously impeded the free flow of capital to industries vital to the national defense. And maybe it has. But there appears little merit in arguing about it now. For the commission has spoken and, barring possible intervention by the courts or Congress, competitive bidding for the securities of registered electric and gas utilities is now the law of the land.

The problems confronting financing utilities and security underwriters under the competitive bidding rule would appear to fall into three major groups: (1) Those concerned with the mechanics of security preparation and

bidding procedure; (2) those concerned with possible government competition, and (3) those concerned with liabilities of utilities and underwriters under the Securities Act of 1933. Let's look at each group:

THE problems comprising the first group stem largely from the fact that all the terms and conditions of specific security contracts must be firmly established in advance of any invitation for bids. For, obviously, the competitive device does not lend itself to the satisfaction of nebulous desires for capital.

Determination of the exact securities to be underwritten has been one of the services performed for financing utilities by investment bankers in the past, but under the competitive bidding requirement the underwriter—who may be any one of five or a hundred bidders—cannot be determined until after all bids have been opened and appraised, and the SEC has approved the utility's choice of bids. At the same time, no investment banker, without sticking his neck out dangerously, dares bid for an issue until the specific contracts to be underwritten have been created. It looks like another of those "vicious circles" utility executives have previously heard about.

Perhaps the most satisfactory method would be to have qualified underwriters, experienced in security creation, continue to aid financing utilities in the preparation of issues, provided they can be fairly paid for their work. One of the requisites of security preparation is knowledge of what investors want, and the investment bankers of the country certainly have more of it than any other single group.

Through constant association with their clients, they keep advised of ever-changing investor requirements. As a result of repeated canvasses and transactions, they are able to appraise investor reaction to innovations in tax clauses, conversion privileges, and similar contract provisions. From their day-to-day dealings, they can determine at first hand why investors scramble for some issues and avoid others, though they look alike. And because they have their fingers constantly on the pulse of investment markets, they can anticipate with a high degree of accuracy investor reaction to any provision an issuer may wish included in his security contract.

IN fact, aside from a comprehensive poll of all prospective purchasers of a new security issue—which the investment banker, in effect, has already

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taken—the presence of his experts at the conference table is the best assurance a financing utility can have that its forthcoming securities will fit current investor requirements. For in the last analysis, securities must be purchased by investors, if utilities are to engage capital. They are issued primarily to be bought.

The Securities and Exchange Commission and its public utilities division have, on numerous occasions, been critical of the degree of protection investment bankers have provided purchasers of the securities they have underwritten. For instance, in its statement accompanying the competitive bidding rule, the SEC said:

> Investigations by congressional committees and by this commission disclose that many of the leading investment bankers . . . have sponsored issues which, to the subsequent misfortune of investors, were not adequately safeguarded. Indeed, the general inadequacy of protection to investors was a primary factor underlying the passage of all the acts administered by this commission.

And the commission's public utilities division said, in its competitive bidding report of last December:

> . . . to an increasing extent the various regulatory authorities, including the SEC both with respect to the 1935 Act and the Trust Indenture Act, have taken over the function of insuring adequate protection of investors by requiring the inclusion of certain provisions in indenture and preferred stock contracts. Past history fails to support the conclusion that the services rendered in this respect by underwriters has been adequate to protect the public.

THERE is much meat in these criticisms, and no unprejudiced person will deny the SEC's substantial contribution to the protection of investors, through insistence upon adequate protective clauses in security contracts. But it will likewise be apparent that no small part of the commission's success in this respect has been due, in large measure, to the power it exercises over financing utilities. For about the best an astute investment banker could do in the past was to urge a financing utility to include certain protective clauses in its security contracts, and to decline the underwriting, if its advice went unheeded. In that event some less conservative underwriter usually did the financing. But with the broad powers it acquired under the Holding Company Act and the Trust Indenture Act, the SEC has no need to argue or plead with a financing registered utility. Either its suggestions are adopted by the utility, or there are no securities to be underwritten.

There is a strong possibility, however, that these criticisms were just so much "campaign oratory," delivered in the heat of argument that preceded promulgation of its competitive bidding rule. And now that this underwriting device is mandatory upon financing registered utilities, perhaps the commission will look upon investment bankers as its "loyal opposition," particularly if they accept the rule as a *fait accompli* and coöperate with the commission in its operation. There is reason to believe it will. The competitive bidding report of last December, prepared by the SEC's public utilities division, said:

> Services relating to financial programs of a utility company should (as it is not today) be placed on a professional basis to the extent needed, and purchased as such.

And a little further along in the report appeared this statement:

> There is clearly no dearth of individuals and bankers who are competent to render sound financial advice.

IN the event the commission itself concurs in these views, and will per-

Problems under Competitive Bidding Rule

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mit investment bankers to advise financing utilities and assist them in determining the terms and conditions of security contracts for reasonable fees, one of the major problems proposed by the competitive bidding requirement will be solved.

But if underwriters are not permitted to perform these functions, the job will probably have to be a sort of "community undertaking." The financial attorneys, who have in large part set up the registration statements and prospectuses of the past, can care for procedural problems. The utilities themselves have been educated in certain phases of investor requirements, and are far more appreciative of the need of sales appeal in their securities than they were a decade ago. And the SEC can be counted upon to provide an ample assortment of protective provisions for inclusion in security contracts. Each of these might contribute in other ways to the joint undertaking, but no matter how effectively each of them functions, there will still be an empty chair at their conferences. No one having intimate acquaintance with the current preferences and desires of the ultimate purchasers of utility securities will be present. And when the completed issue is offered to underwriters for competitive bids, it will be too late to learn it doesn't "fit."

The SEC's public utilities division suggested in its December competitive bidding report that independent experts be retained by financing utilities to prepare securities for market, but experienced utility bankers hold the suggestion impractical. It is their belief that even were the most capable experts in their employ to withdraw and set up as independent experts, their present efficacy would be relatively short-lived. The issues they devised at the start would undoubtedly be geared to current markets, and well suited to investor requirements. But

as time went on, these experts lost intimate touch with the ultimate buyers of securities; when they no longer had the "feel" of the market that is gained only through constant association with investors and security salesmen, their issues would tend to become "ideal," or "theoretically perfect," but lacking in appeal to investors. For many investors buying securities, like women buying hats, don't want issues theoretically or ideally suited to them. They want what strikes their fancy.

ONCE the terms and conditions of security contracts have been established, however, and registration statements have been filed with the SEC, the problems of financing utilities will largely be at an end, provided this work has been done properly, and no errors or omissions of material fact have crept into these documents to subject them later to the liabilities of the 1933 Securities Act. For all they need do is invite bids, "read 'em and weep," or cheer, as the case may be, and collect their money. And institutional investors, buying for "keeps" rather than resale, will have a few worries confronting them. If they decide they want an issue, after examination of all pertinent data, they can set their price and bid. If they name the best price, they will secure a desired investment. If an underwriting syndicate outbids them, and they still want some of the issue, the successful bidder will doubtless accommodate them. And if they are uninterested in paying more than their original price, other issues will be coming along.

But the problems of investment bankers, or groups of bankers, seeking to underwrite utility issues, will by no means be ended merely by their creation and registration. Some of these problems, perplexing as they may seem to underwriters at the moment, may disappear before these words reach print, for many keen minds in Wall Street and Washington are trained upon them. Others may be solved by adjustments in underwriting procedure, after underwriters have cut their competitive bidding eye teeth. But some will probably require changes in the SEC's rule itself, a possibility recognized by the commission at the time of its promulgation. Only a few of these problems deserve mention here.

IN the past, managers of underwriting syndicates have received a small part of total underwriting spreads, amounting generally to around an eighth of the total spread, to compensate for their outlay in cash and effort in negotiating underwritings, preparing security contracts, and managing security distribution. In addition to this manager's fee, they also received that part of the balance of the total spread accruing to them on securities retained for distribution by their own sales forces, both wholesale and retail. Now that issues of registered utilities must be underwritten competitively, will syndicate managers continue to receive these fees? With the preparation of securities completed and paid for in advance of determination of the underwriter, and with negotiations between financing utilities and underwriters in advance of the auction no longer necessary, will members of bidding syndicates agree to compensate syndicate managers merely for supervising security distribution? Would not the maximum prices these syndi-

cates could bid for issues be reduced to the extent of the manager's fees allowed? At the moment, one of the major syndicates preparing to bid for the New York State Electric & Gas issue proposes to allow its manager a small fee, in the event it wins the issue, while another sizeable syndicate proposes no manager's fee.

Again, what relationship is likely to exist between the accepted bid and the offering price of competitively underwritten issues? In privately negotiated underwritings of the past, the SEC has passed upon the reasonableness of prices paid to issuers and gross underwriting fees. Will the commission, directly or indirectly, control the prices at which competitively engaged issues may be sold initially? Many of its findings and pronouncements have emphasized the belief that underwriting spreads resulting from past distributions of utility securities have consumed too great a proportion of the aggregate public investment. If two underwriters name the same, exact price in competition for a utility issue, but one proposes a lower offering price than the other, which is likely to be considered the "best" bid by the SEC?

WHAT of the contest likely to be waged between institutional buyers and security underwriters, once bids are invited for utility bonds of institutional quality? As moneyed institutions seeking employment of their own funds, all institutional buyers need do, upon being awarded issues, is pay the price and lock up the bonds. But since security underwriters are primarily merchants of securities, they must sell the issues they buy at competition—most of them at a profit, if they are to continue in business, and always at substantial expense. And because of this basic difference in bidding purpose, institutional buyers will generally have a price advantage over security underwriters, the extent of which will be measured in each instance by the cost of security distribution, and the margin of profit necessary to satisfy the capital employed by underwriters.

While the possibility of contest between institutional and underwriting bidders will overhang all competitive sales of utility bonds, it promises to be keenest for small and medium-sized issues, which can be absorbed readily by a single institution, or by a group of them. But when utility bond financing passes the $50,000,000 mark in individual borrowings, competition between bidding institutions, and between institutional and underwriting bidders, will tend to slacken.

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Not that institutional buyers have not absorbed larger single issues than $50,000,000 in their entirety in the past, for one need point only to the American Telephone and Telegraph or the Georgia Power private sales to refute this contention. But since the limited number of institutional buyers interested in very substantial pieces of single issues will likely preclude the possibility of more than one institutional bidding group for very large issues, and since institutions will no longer be able to dictate the terms and conditions of competitively underwritten issues, as they have not only in private sales of the past but in negotiated issues in which they were expected to participate, institutional bidders will, in all probability, tend to withhold bids for the occasional huge issues, and purchase any blocks desired from the successful bidder.

These, then, are some of the more perplexing problems concerned with the mechanics of issue preparation and bidding procedure which stem from the SEC's recently promulgated competitive bidding rule. The possibility of governmental agencies entering the competition for utility issues, and the danger that many successful bidders may tangle with the various liability provisions of the 1933 Securities Act, will be discussed in a later instalment.

The second part of this article will appear in the next issue.

Development of Coöperative Relationship

"THROUGH *the development of a coöperative relationship between employer and employee, a full and complete recognition and mutual respect for each other's rights, unity of purpose in the defense of free enterprise, private ownership of property, a free and unreserved acceptance of collective bargaining, and unity of mind and action in the protection and preservation of our common heritage, the owners and managers of industry and the representatives of labor can make vital and real the equality section of the Declaration of Independence, can rob the Communists and their fellow travelers of their class conflict argument, as well as of those who proclaim that no basis of accommodation exists between capital and labor.*"

—WILLIAM GREEN,
President, American Federation of Labor.

The Utility Holding Company And the "Death Sentence"

The extreme views of the SEC on the question of simplification. A reminder as to the valuable service holding companies have rendered in the development and extension of service and the lowering of rates to consumers. What destructive political action may lead to.

By THOMAS F. DOYLE

INVESTED with a vast congeries of powers, the Securities and Exchange Commission is moving rapidly toward the breakup of America's great utility holding company systems. The Public Utility Act of 1935, with its famous "death sentence" clause, its constitutionality as yet undecided, confers on the commission an authority scarcely paralleled by any agency established by Congress. Some critics say that the 5-man agency, however useful as a protector of investor interest, not only oversteps its powers, but that its policies and decisions foreshadow the ultimate absorption of the nation's utility resources into a gigantic federally controlled network.

Nor is this an extreme view. There are sound reasons to believe that the defense emergency, rather than reversing, has accelerated the socialistic trend in government accentuated under the New Deal. What is happening in the utilities today may be a foretaste of equally forthright attacks on other corporate citadels—purportedly in the public interest. The attitude of the government toward the electric industry was aptly summed up in an editorial in the *New York Sun* on November 27, 1935. The editorial said, in part:

> The real goal of the opposition is not regulation of the electric utility business, but its replacement by public ownership. The strategy is plain: First, all the powerful management corporations are to be broken up so as to deprive operating companies of the advantages of central financing and direction; then operating companies are to be "integrated" into small territorial subdivisions; after that they will be destroyed piecemeal through ruinous competition with municipal and district public ownership units in which operating deficits will be made up by the tax-

payer. After private concerns have been driven out of the field, the various public ownership groups doubtless will be "integrated" again into a Federal system managed by bureaucrats in Washington.

An admittedly beneficial effect of the Holding Company Act has been to induce errant companies to remedy the defects and abuses spotlighted during congressional debate on the measure. There is, it must be conceded, an extraordinary difference between conditions only too prevalent when the Insulls and the Hopsons had their heyday and those of today, when previously suspect groups have dewatered their stocks, simplified their corporate set-ups, and abandoned lobbying and other practices that so often made them targets for censure. Contrary to popular belief, the corporate structure of the utility systems is much simpler than those of some railroad companies like the Pennsylvania and New York Central, and some industries like General Motors and United States Steel. Linked to a natural wish to avoid the impending storm, two main reasons prompted these simplification moves—a reduction of bookkeeping expenses and avoidance of penalty taxes on intercorporate dividends inserted in recent Federal revenue acts. Sound business judgment had already dictated the simplification process that the SEC now seeks to carry to the point of actual confiscation.

INTERNAL reform came too late, however, to save the industry from the "death sentence" provisions of the law enacted by a narrow congressional majority when such severity seemed expedient. But even the most pessimistic scarcely envisioned the ruthless interpretation which the SEC has recently placed upon this lethal clause. The intention of Congress, as viewed by most observers, was to remove holding companies of other than the first degree and to permit approved companies to maintain all geographically contiguous and integrated properties. Now, as appears in tentative plans drawn up for the United Gas Improvement, Commonwealth & Southern, and Engineers Public Service systems, not only are the companies to be denied the retention of more than one integrated system, but even that solitary system is to be attenuated to an extent that leaves the holding company with only one major operating unit under its control. It is difficult, under such circumstances, to understand how any holding company would care to remain in existence. Already, the North American Company, despairing of ever meeting SEC demands, has announced it will liquidate its electric holdings and probably invest its funds in other undertakings.

Ever since the utility issue loomed large in politics, the electric holding company has been presented as a particularly objectionable development in American business life. It is probable that before 1932 only a minority of the voters were aware that such things as holding companies existed. Perhaps today there are some who believe that the holding company is exclusive to the electric generating industry and that it is a device of comparatively recent origin. The truth is that its history is as ancient as Rome itself. It has existed in most of the great countries of Europe for centuries.

IN his book, "The Holding Company," Dr. James C. Bonbright

says: "The holding company has now become such an essential part of the structure of large scale business that its abolition would be serious, if not fatal, to the effectiveness of American industry." In the United States it is found in all its large industries—food, metals, coal, oils, automobile, steel, to mention some. Furthermore, the "national set-up" or "central organization" idea with which it is associated is found in virtually every phase of daily life. It exists in journalism, education; labor, fraternal and charitable organizations; in religion, politics, and, most emphatically, in government itself. The government's own electric "yardstick," the Tennessee Valley Authority, is itself a great holding company.

Probably one of the most quoted testimonials to the efficacy of the holding company came, in 1929, from none other than TVA's power director, David E. Lilienthal:

> The holding and management company ... in a relatively few years changed the entire economic nature of the public utility industry. Isolated plants have now given way to great systems whose lines span several states and serve hundreds of communities, all operated under unified managerial and financing supervision. The spread of rural electrification, the amazing advances in telephony, the rise of superpower systems—these and many other technological developments so intimately related to the public welfare are directly attributable to the holding company. Perhaps most important of all, to the holding company must go the credit for the unprecedented flow of capital into the public utility industry making possible extensions and improvements of service.

Almost coincidental with the establishment of the TVA, the Roosevelt administration launched its successful campaign to bring its private competitors under Federal domination. For six years, the holding company, always under the threat of ultimate extinction, has felt the pressure of a constantly expanding control. Over it the Securities and Exchange Commission exercises a discretion that is found nowhere else in government. Utility men have declared the Holding Company Act fundamentally unconstitutional in that it transfers to an administrative body the legislative power and duty of determining what is in, or detrimental to, the public interest in the issuance of utility securities, and also in that it prohibits the sale of unapproved securities even if the sale is wholly intrastate and without the use of the mails.

THE supervision exercised by the commission over every detail of utility operation, entailing as it does considerable expense and time in the preparation of routine and special reports, has been accepted in graceful spirit by the industry. Regulation, even of the strictest kind, has been looked upon as an insurance against the specious and unfounded charges that have often been made against utility manage-

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¶ "THERE *are over six million farms in the United States, scattered over a million and a half square miles of territory, which means an average of only four farms per square mile. In some areas there are twelve, in some only one. To bring electricity to these rural homes is beyond the capacity of the publicly owned plants, most of which are too small to supply more than local needs.*"

ments. Rulings affecting the nature and size of new financing have been accepted with little or no demur. As a regulatory body, the SEC has been regarded as a just, if sometimes severe, overseer, appointed in the public interest as well as in the interest of the industry itself. If the commission did not also possess the power of imposing and executing "death sentences" upon utility companies, no vital conflict would center round its activities.

When the House, six years ago, was debating § 11, Joseph P. Kennedy, SEC's first chairman, declared that the burden cast upon the agency by this section was "simply staggering." "The phrase, 'public interest,' is not defined in the House bill," he said. "Thus this bill furnishes no effective standard to guide the commission in the momentous decision it must make as to which of the holding company systems are to be broken up and how such process is to be effected."

This has been the focal point of the argument recently presented by Commonwealth & Southern spokesmen in suggesting the appointment of a committee of representatives of the government, the industry, and independent engineers and economists to submit in an advisory capacity a plan of utility integration and a determination of the criteria and standards in keeping with the purpose of the Holding Company Act and the present critical national situation.

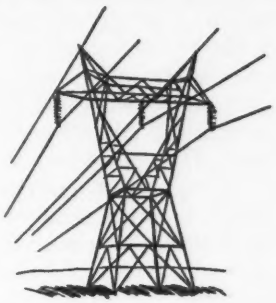
APPARENTLY disregarded by the SEC is the fact that Congress has actually embodied in the act (§ 30) provisions for just such a plan, upon the basis of which its recommendations should be made as to the type and size of acceptable integrated systems. An implacable resolve to disintegrate wholesale rather than employ the just and wise discrimination that national solidarity, common sense, and fair play suggest seems to guide the commissioners in their intolerant interpretation of the spirit and purpose of the law. As pointed out by Edward L. Shea, president of the North American Company, the conditions existing today could not be foreseen at the time of its enactment. "I am convinced," he said, "that no Senator or Representative who voted for the act had the slightest idea that the carrying out of its terms by the Securities and Exchange Commission would occur under conditions even remotely resembling those with which we are now faced."

In a recent Senate debate, Senator Wheeler observed: "Laws are not always construed as their authors intended. . . . I call attention to the fact that at times the Utility Holding Company Act has been construed contrary to the views of members of the Senate, expressed upon the floor of the Senate."

Theoretically designed to integrate the utility industry, to protect the security holder, and to assure the consumer the best possible service, the act, as now being enforced, tends to create waste and confusion and to destroy companies whose record of service and rates is unimpeachable. The divestment from some of the country's most splendid holding companies of large parts of their properties means that whole communities will be forced to depend on more or less isolated units, whose efficiency and reliability will have been largely undermined by severance from strong, unified organizations.

Holding Company Credited with Real Public Service

"If public opinion endorses private ownership and operation, for this favorable decision the electric industry is in turn considerably indebted to the holding companies, whose services . . . have made improvements and extensions of service possible. If for no other reason than that it has made possible high-grade service at low costs, even in small isolated communities, the holding company must be credited with having performed a real public service."



If the SEC plan is to attack bigness, it is difficult to reconcile this with the extent and scope of the government's own projects, particularly in the Tennessee valley and the Pacific Northwest. The southern system of the Commonwealth & Southern Corporation, for instance, has a generation capacity less than that envisioned by the TVA or the Grand Coulee and Bonneville dams. "If it is economically sound and in the interests of consumers and the public," says Commonwealth & Southern's president, Justin R. Whiting, "for the government in its operations to construct properties of the large size they are now doing, does it not follow that it is likewise economic for the smaller private systems to be maintained? If this is not true, then it must be assumed that one economic rule should be applied to public operation and another rule to private operation. Such an application in the end can only result in the taking over by public operation of all the privately owned companies."

The view is advanced by William W. Bodine, president of United Gas Improvement Company, that the Holding Company Act is being currently interpreted as an antitrust or disintegration act, aimed at dissolution of bigness, or what is called "concentration of economic power," such as was advocated during the debate on the legislation, but which Congress refused to pass, rather than as the integration and regulatory act which Congress did pass. "It is my opinion," Mr. Bodine says, "that such interpretation and administration of the act, particularly if enforced under the very unsettled conditions today, will result in perhaps substantial damage to our stockholders."

"The utilities," Wendell L. Willkie once said, "have a right to know officially and not by guess what the government plans to do with them." Before a town hall audience, Attorney General (now Associate Justice) Robert H. Jackson intimated that the government had no intention of nationalizing the public utilities. But the policy of the administration now seems directed to no other end. Of secondary importance, apparently,

is the financial loss that threatens the industry's millions of investors if their holdings are forced into a depressed market. Government ownership has so far won all the major battles. There is more socialism, more bureaucracy, more dictatorship, and certainly more arrogance in government than ever before. The difficulties confronting the utility companies indicate that an old issue is again crystallizing in the political domain, this time to an extent that makes the man in the street as vitally interested in the holding company conflict as any holder of electric securities.

The issue is that of private *versus* public ownership of electric utilities. Do the people want public ownership of power facilities? Certainly not on the basis of figures that reveal that out of 36,291 central stations in 1939, only 2,715 were municipally owned, and that in the Pacific coast region, where public ownership sentiment is strongest, only 799 out of 3,952 plants were publicly operated. Since the first power plant was opened in 1882, power generation has been preponderantly a private enterprise. Increasing volumes of production have brought about a corresponding decline in rates. The reduction of the average kilowatt-hour charge for homes from 8.70 cents in 1913 to 3.84 cents in 1940 establishes a record surpassed by no other industry. As was said by W. E. Mitchell, vice president and general manager of the Georgia Power Company, from no other industry does the buyer expect so much and always get it, and yet pay so little. According to the Bureau of Census of the Department of Commerce, the average cost of electric service is 24 per cent higher in the socialized plants than in the private plants. The fact that the private companies are today contributing a million dollars a day in taxes to government treasuries recalls the significant admission by Senator Norris, patron of public ownership, that "if the TVA paid the same taxes that are now paid by privately owned utilities in that section the TVA would be out of business in three months."

ONLY a comparatively small number of municipal plants issue reports on which an evaluation may be based as to their efficiency. This recalls the historic case of Mapleton, Iowa, once regarded as a "show piece" by advocates of public ownership. In 1931, after four years of operation, the city's electric plant reported it had made a profit of $34,128.27, but when a court audit was ordered, investigators found that the plant's operations had resulted instead in a loss to the taxpayers of $13,620.36. In Oregon, where the Bonneville dam is expected to reach an ultimate capacity of 432,000 kilowatts, lack of public confidence in government power schemes is reflected in the fact that only a handful of small municipalities have organized public utility districts and none of these is yet a going concern. Recently, the voters of Clatsop county, Oregon, rejected a proposal to establish a utility district despite the fact that for nearly two months Bonneville Administration agents, Carl Thompson, of the Public Ownership League, and Morton Tompkins, State Grange leader, had been especially active in its support. Only last November Spokane, Washington, also turned thumbs down on municipal ownership. As an employer,

the municipal utility compares unfavorably with the private plant. A recent estimate was that average salaries and wages in all classes of employees of private utilities were $1,723 as compared with $1,463 for the municipal plants.

If public opinion endorses private ownership and operation, for this favorable decision the electric industry is in turn considerably indebted to the holding companies, whose services, as Mr. Lilienthal admits, have made improvements and extensions of service possible. If for no other reason than that it has made possible high-grade service at low costs, even in small isolated communities, the holding company must be credited with having performed a real public service. A Federal survey once showed that the rates of North American units were 18 per cent lower than those of companies unassociated with holding companies. Many instances of this kind can be recited, all tending to the conclusion that if the worth of holding company systems is to be gauged in benefits to the citizen, their retention is well justified from the public viewpoint.

When public ownership exists on a wide scale the reason often lies in the unwillingness of private interests to expand. This has been the case in Europe, where, according to one estimate, state-controlled enterprises now affect the welfare of almost 70 per cent of all Europeans. The growth of the United States government's participation in business in recent decades, unlike the case of European countries, is due to a changing aspect concept of government rather than to the failure of business to meet consumer needs. It has been the proud boast of the utility men that were it not for their resourcefulness and courage as well as the capital investments of holding company pioneers, the electric industry would never have reached its present high degree of efficiency.

One aspect of power expansion reveals the public ownership groups in a sad light. Even while private industry was demonstrating that the generation of power by hydro rather than by steam had already begun to be obsolete, the government committed itself to enormously costly water-power projects. The increasing concentration by utility managements on the construction of steam rather than water plants means that in time, TVA, Bonneville, and Grand Coulee will have become, with the 1912 Ford, mere milestones in the march of science. The government's *faits accomplis* are there to the tune of hundreds of millions of dollars.

❦

¶ "Willingness *to assume risks and where possible to explore new avenues of opportunity have been the outstanding characteristics of American enterprise. Excepting the rural field, where . . . various understandable factors proved an obstacle, America's power industry, aided by the financial, supervisory, and engineering resources of the holding companies, has chalked up a prodigious achievement.*"

Meanwhile, private industry, with the decrease in the coal requirements per kilowatt hour from 8 pounds to less than one pound has again upheld the old axiom that it always manages to keep twenty years ahead of government. Making the government's ventures seem even more unbusinesslike, experts point out that steam plants can be more cheaply and quickly built, and are correspondingly more important in meeting rapid expansion needs.

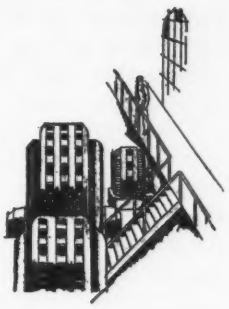
The value of the holding company in this new development is apparent. Considerable financial aid has been extended to the operating units in the last decade through the holding companies, "death sentence" notwithstanding. An illustration of this is the assistance given by the Commonwealth & Southern Corporation to the Georgia Power Company in building steam generating plants and facilities for defense projects in the subsidiary's territory. The parent company contributed $14,337,319 in cash to its Georgia unit and surrendered the preferred stock it held in the company, amounting at liquidation value to $5,328,000.

UTILITIES have been chided for neglecting the rural field. This is to ignore what has already been accomplished for the farms and to minimize the impeding factors. Initial problems were the costs of line extensions and the absence of farm equipment to utilize electricity. Not until the twenties was it possible to undertake in earnest the supply of this neglected market. Today, in some areas, up to 64 per cent of farms are being served, but, nationally speaking, only about 11 per cent of the rural homes are enjoying electric service. Sometimes it is intimated that under Federal sponsorship power facilities would be brought more readily into the farm regions. The facts, however, do not support this contention. There are over six million farms in the United States, scattered over a million and a half square miles of territory, which means an average of only four farms per square mile. In some areas there are twelve, in some only one. To bring electricity to these rural homes is beyond the capacity of the publicly owned plants, most of which are too small to supply more than local needs. Unless and until the government interconnects its giant developments—at tremendous cost to the taxpayers—the only real hope of adequate rural service lies in the private utility companies, working with the Rural Electrification Administration and electric coöperatives; but even these companies, without the financial backing of the holding companies, could not hope more than to maintain their present ratios of rural service.

WILLINGNESS to assume risks and where possible to explore new avenues of opportunity have been the outstanding characteristics of American enterprise. Excepting the rural field, where, as indicated, various understandable factors proved an obstacle, America's power industry, aided by the financial, supervisory, and engineering resources of the holding companies, has chalked up a prodigious achievement. It is true that in the last decade the major concentration was mainly on appliance selling and load building rather than on new construction. Valid and powerful deterrents to such building were the rapidly increas-

Growth of Government in Business

"THE enormous and continuing growth of government in business is reflected in the measure to permit the government to manufacture goods from the rubber, tin, copper, and other strategic materials bought by the Reconstruction Finance Corporation's subsidiaries as part of the defense program. The bill would add another $1,500,000,000 to the corporation's borrowing powers, boosting its authority to make commitments against the public credit to a total of approximately $9,000,000,000."



ing number of Federal power projects, the growing burden of taxes, and the uncertainty and fear on the part of the public that made it difficult to market new securities. Billions of the people's dollars went into savings each year, but only a trivial percentage found its way into private investment.

Today the defense program places the national government in the place of number one investor. In its eagerness to mobilize all available supplies for Britain, the United States government is pouring funds into munitions, factories, and mills at about four times the rate of private capital. A recent survey showed that of the $2,138,054,000 which has gone into new plants, $1,574,523,000 has been provided by the government. The trend is all toward undermining the old order, and the strangest part of it all is the almost complete absence of public interest in the phenomenon that is taking place.

Senator George D. Aiken of Vermont, expressing the fear that some form of state socialism will evolve under President Roosevelt's emergency powers, says that the Federal government will own or control far more closely than heretofore the electric power, the transportation systems, and the financial institutions of America. Greater Federal control will be exercised over our rivers and other waters and over the land of the nation. "If this program goes too far," he warns, "it would not be modified state socialism."

THE enormous and continuing growth of government in business is reflected in the measure to permit the government to manufacture goods from the rubber, tin, copper, and other strategic materials bought by the Reconstruction Finance Corporation's subsidiaries as part of the defense program. The bill would add another $1,500,000,000 to the corporation's borrowing powers, boosting its authority to make commitments against the public credit to a total of appoximately $9,000,000,000. The RFC, like the TVA, is a Federal holding company, surpassing in resources any like corporation created in the field of private business.

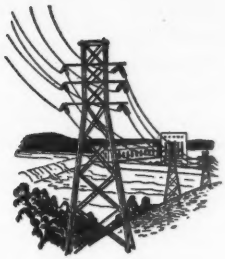
An ironic feature of the holding company situation is that while government prepares to enforce the drastic provisions of the Public Utility Act, its national defense program owes a considerable debt to the widespread developments which the holding companies have made possible in the electric field. Reports for 1940 of every major system stress the expenditures made to improve service and increase output to meet defense needs. Budgets have been increased to take care of new construction, including plants and line extensions. In view of the efforts to conserve the nation's resources in these unsettled days, one wonders if there is not a grave danger in the government's antiutility holding company policy. Under a blanket endorsement obtained from Congress before the international situation began to assume a menacing aspect, the SEC prepares to undertake a program that may mark merely the beginning of an attempt to socialize *all* resources and establish a state collectivity. Even from a defense viewpoint alone, the dismemberment of a $15,000,000,000 industry at this time seems as unwise as it is uneconomic. In any state which engages through its bureaus and agencies in developing an elaborate system of national economic planning, inevitably human nature and human rights are ignored. Experience indicates that where this system has been tried, human beings are victimized to a disastrous extent. Persecution is the inevitable result of any economic dictatorship.

No less a person than Franklin D. Roosevelt, when he was governor of New York state, warned in a radio speech on March 3, 1930:

> The doctrine of regulation and legislation by "master minds," in whose judgment and will all the people may gladly and quietly acquiesce, has been too glaringly apparent at Washington during these last ten years. Were it possible to find "master minds" so unselfish; so willing to decide unhesitatingly against their own personal interests or private prejudices; men almost god-like in their ability to hold the scales of justice with an even hand—such a government might be to the interests of the country, but there are none such on our political horizon, and we cannot expect a complete reversal of all the teachings of history.

Perhaps America — peace-time America—will take warning from the internal disruption that preceded the collapse of the French Republic. What factor more than any other helped to bring about the downfall? Louis Marlio, member of the French Academy, chairman of the board of the Aluminum Company of France, and friend of Marshal Petain, says: "It was because they turned vital industries into politics." Industrial plants during the socialist régime of Leon Blum were placed under government control. In the course of its attacks on private industries, the government took control of many key industries.

"How," asked Andre Maurois before the Congress of American Industry, "could production be well organized when all decisions related to it were taken, not because the necessities of national defense commanded it, but because they agreed with an official ideology?" On the necessity of social reforms, most Frenchmen, as do most Americans, agreed. It was the aggressive manner in which such reforms were administered in France that caused resentment. "Businessmen and workers," said M. Maurois, "do not live by profits and wages alone. They have their feelings, their pride, their honor."



Let's Have a Frank Look At Flood Control

May it not cost more for the prevention of damage than the cost of the damage itself? Should the prevention cost be borne entirely by the Federal government? And how about the justification for some of the large Federal expenditures allocated to navigation?

By FRANK M. PATTERSON

FOLLOWING the government's standard remedy for the alleviation of a hangover from a spending spree the Army Engineers were reported in recent press dispatches to have endorsed plans for a new $250,000,000 omnibus flood-control bill. The Chief of Engineers is said to have told the House Flood Control Committee that it is important to have an ample supply of such projects authorized as a cushion against unemployment in eventual peace-time readjustments. This is reminiscent of the old but exploded theory that the best cure for disorders following overindulgence in alcoholic drinks is frequent and liberal doses of Scotch and charged water.

The new bill would embrace 36 projects included in the 1940 flood-control bill which was shelved in favor of rearmament and would include approximately $180,000,000 for the Los Angeles-San Gabriel rivers basin for which there is now an authorization of $70,000,000. This prompts the suspicion that the former authorization was woefully inadequate or that the present proposal is extremely wasteful.

The basic idea of the national flood-control policy appears to be that the Federal government should bear the entire costs in all cases. A review of flood records at several cities on our principal streams fails to substantiate that premise as may be seen in the maximum flood crests in their early history as at Pittsburgh where the Allegheny and Monongahela rivers unite to form the Ohio and St. Louis and

Kansas City. Kansas City suffered severe damages in 1903 with a flood crest 3 feet lower than the mark established in 1844. Further research undoubtedly would prove that similar conditions would be found in other places.

PROMINENT in flood-control projects on which large amounts have been spent is that on the Tennessee river, where the Tennessee Valley Authority charges much of its capital investment to that account.

The topography of the land traversed by the Tennessee and its tributaries is precipitous and heavy rains often occur from December to April, inclusive, when the ground is frozen so that the water runs off like rain off a tin roof.

Norris dam, a part of the TVA program, is located on Clinch river above its junction with the Tennessee and something more than 100 miles above Chattanooga. Its cost was slightly more than $36,000,000 but the record is silent as to how much of this was charged to "navigation and flood control."

It is a multipurpose structure for the generation of hydroelectric power, flood control, and the improvement of navigation on the Tennessee. Its operation is described in a pamphlet issued by TVA in 1935 as follows:

> Norris dam is primarily a storage dam. Wilson dam at Muscle Shoals and Wheeler dam 16 miles upriver from Wilson dam are run-of-the-river dams. When the river is high much power can be produced at Wheeler and Wilson. When the river is low little power is available. On the other hand, Norris dam, with its enormous reservoir, can store a full year's rainfall from several thousand square miles. So these and other dams will be connected with transmission lines.
>
> During the wet season when there is abundant power at the run-of-the-river dams the Norris dam will be shut down and the water stored. During the dry season that water will be let out.

THIS was a commendable plan, if it performed according to schedule, but Dame Nature often sets the schemes of men awry, as occurred during the great flood of 1937 and noted in the *Engineering News-Record* of February 11th in that year.

This stated that 40,000 second-feet were being released from Norris and Wheeler dams as a precaution against further rains and that in response to a request from the U. S. Division Engineer at Cincinnati to defer further release until the stages on the lower Ohio and Mississippi rivers declined, TVA wired:

> Release at Wheeler had already been reduced before receipt of your telegram of February 6th and is being held to the minimum practicable. Norris and Wheeler were filled until great damage to highways, railways, and towns was imminent, in order to give maximum reduction of flood crest at Paducah. It is necessary now to release water as rapidly as safe so as to be able to handle subsequent flood flows. We estimate water released from Wheeler reaches Paducah in about four days. At present Norris reservoir has only a moderate storage available for local flood control.

In 1930 a plan for the improvement of navigation on the Tennessee river was approved by Congress at an estimated cost of $74,000,000. Little work had been done on it before the advent of TVA in 1935, which included further improvement of navigation in its program.

IT is difficult to learn the average annual flood damage on the river, but the report of the Chief of Engineers on the 1930 plan (House Document 328, 71st Congress, 2nd Session) contains the following remarks:

Floods occur frequently on the main stream and on the lower part of most of the tributaries. The damage done is not great, but the flood of 1926 caused damage estimated at $2,650,000. The district engineer states that still larger floods are possible and that a flood of the magnitude that might be expected to occur once in 500 years would do damage amounting to $14,000,000. Including damages from such future floods, he estimates the average damage from floods at $1,780,000 annually. . . . The only place at which large damages are concentrated in a limited area is at Chattanooga.

The operation of storage reservoirs on the Tennessee river for the primary purpose of restricting floods on the Mississippi river would have no marked effect on plans for flood control there, but would seriously injure the power possibilities of the Tennessee basin. If the reservoirs were operated for the primary purpose of power in the Tennessee basin their effect on Mississippi river floods would be negligible.

THE TVA annual report for 1935 contains the following comments on flood damage:

The average direct flood damage between Norris dam and Wilson dam has been estimated by the Corps of Engineers in three separate studies at from $864,320 to $926,413. Most of the damage occurs at Chattanooga. The large amount of flood storage provided by Norris dam, which greatly increases the cost of the program, will prevent at least half of the present average flood damage. The average annual reduction in flood damage at Chattanooga is estimated by the Corps of Engineers at $391,700.

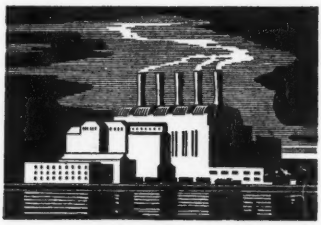
Accepting these figures at their face value, the 1935 estimate of damage between Norris and Wheeler dams amounts to 52 per cent of the estimated annual average in the report of the Chief of Engineers in 1930, which included $14,000,000 for a hypothetical flood that might occur once in 500 years. That was not as formidable as it sounds, except to the hypothetical dwellers in the valley, since it would average only $28,000 annually for the 500-year term.

If the government is to bear the full costs of flood protection on the Tennessee it would be cheaper for it to set aside a fund invested at an annual interest rate of only 2 per cent with which to recompense the losses, all of which certainly are not its responsibility. Based on the annual average damage of $1,780,000 this would require an investment of $89,000,000.

AT June 30, 1937, the latest report as this is written, TVA shows a charge of $148,079,177 for "navigation and flood control." Since the Chief of Engineers' report in 1930 indicates that not more than $89,000,000 could be justified for the total elimination of flood losses and assuming that this amount had been spent for that end, leaves $59,079,177 as a charge to navigation to which must be added the $16,051,575 spent by the Army for new work to the same date, with maintenance and operating charges of $304,581 in the same fiscal year. Thus the total investment to the end of the 1937 fiscal year was $75,130,752 or an average of $115,231 a mile as compared with an average investment of $108,000 a mile for the Class I railways of the country. It must be recognized that the government's work provides only the equivalent of a roadway, while the railways' investment is for their entire facilities for freight and passenger service.

If it be thought that too great a sum has been shown for flood control in the foregoing, any reduction in that item would add an equal amount to the figure shown for navigation. The difficulty in attempting to find the TVA costs for navigation and flood control is seen in the tables on page 88 from its 1937 annual report.

IN the calendar year 1936 a traffic of 2,166,397 tons with an accrual of



INVESTMENT IN PROGRAMS

	To 6/30/1936	*Fiscal Year 1937*	*To 6/30/1937*
Navigation and flood control ..	$81,429,603	$66,649,574	$148,079,177
Electricity	6,455,465	4,489,597	10,945,062
National defense	1,925,600	371,688	2,297,288
Fertilizer and agricultural development	5,353,855	2,641,304	7,995,159
Regional studies and demonstrations	626,454	259,522	885,976
Emergency flood relief	.....	214,057	214,057
Totals	$95,790,977	$74,625,742	$170,416,719

RESERVOIR CLEARING, MAINTENANCE, AND PROTECTION

Dam	*To 6/30/1936*	*Fiscal Year 1937*	*To 6/30/1937*
Norris	$1,768,811	$268,441	$2,037,252
Wilson	92,694	40,720	133,414
Wheeler	3,531,176	342,167	3,873,343
Pickwick Landing	569,431	744,906	1,314,337
Hiwassee	7,313	3,133	10,446
Guntersville	23,887	509,747	533,634
Chicamauga	12,190	37,143	49,333
Totals	$6,005,502	$1,946,257	$7,951,759

LAND PURCHASES AND BACKWATER PROTECTION

Dam	*To 6/30/1936*	*Fiscal Year 1937*	*To 6/30/1937*
Norris	$8,535,574	$134,214	$8,669,788
Wheeler	4,953,359	689,239	5,642,598
Pickwick Landing	1,989,099	1,642,342	3,631,441
Hiwassee	49,329	337,814	387,143
Guntersville	420,128	2,935,631	3,355,759
Chicamauga	400,593	1,018,260	1,418,853
Totals	$16,348,082	$6,757,500	$23,105,582

66,409,775 ton miles was carried on the river. Sand and gravel accounted for 1,850,523 tons, or 80 per cent of the total, and much of it could have been carried with no river improvements. Cement ranked second with 102,933 tons, or somewhat less than 5 per cent of the total. Slightly more than 50 per cent of the sand and gravel and 90 per cent of the cement was carried in gov-

ernment vessels, presumably for TVA work.

To find the cost per ton mile for the river tonnage it is necessary to use interest on the investment plus the cost of maintenance and operation of the improvements in the year under consideration. Here we must resort to approximation owing to the failure of TVA to allocate the costs of navigation and flood control to the respective accounts; but a conservative figure may be obtained by taking the investment as half the TVA charge to these accounts at the end of the fiscal year 1936 plus $16,000,000 spent by the Army Engineers to that time and their cost of $304,581 for maintenance and operation of the improvements in their charge. Computing interest at only 2 per cent entails an expense for the traffic of an average of 2 cents per ton mile before the commodities are loaded on the boats as compared with an average ton-mile revenue of about one cent for the Class I railways in the same year.

The foregoing analysis shows that the government's programs for navigation and flood control on the Tennessee have fallen down lamentably no matter how its huge expenditures are allocated to each.

THE proposal that the government should bear the entire cost of flood control in all cases is based on the theory that the flood waters are interstate in origin and are owing to deforestation, faulty agricultural methods, and the lack of other proper supervision by the various states. This is not borne out by the government's own records which show that many of the maximum flood crests in different parts of the country were established long before the drainage basins affected were settled or cultivated to any great extent.

To cite only a few instances, the records show that a crest of 42 feet was reached at St. Louis, in 1785, where the flood stage (river bank full) is 30 feet, followed by one of 41.4 feet in 1884. The nearest approaches to these marks were 36 feet in 1893 and 38 feet in 1903. All but a very small part of the business district of the city is on land at a considerable height above the bank of the river. At Kansas City the highest flood crest of record was 38 feet in 1844, and the highest since then was 35 feet in 1903. While much of the city is on high ground there is a considerable area along the Kaw river that is only a little above the flood stage of 22 feet. This locality, largely occupied by railway terminals and industries, suffered large losses in the flood of 1903.

THE most serious flood damage is in the Central states, excluding the areas along the Mississippi below the mouth of the Ohio, where the high levees, built largely at government expense, have failed at various times. The current flood-control program there should furnish much greater protection to these areas and, in the circumstances, it seems just that the government should foot the bill.

The Ohio is subject to meteorological and topographical conditions similar to those cited in the Tennessee river basin and these are aggravated by the small amounts of "bottom lands" that might form temporary reservoirs to lower the maximum flow below them, so that when heavy rains prevail the water has no place to go but up.

The 1937 flood on the Ohio reached record crests and caused great damage at Cincinnati, Louisville, and Paducah, the last just below the mouth of the Tennessee. Extensive losses were suffered at other points; one owing to the topping of a concrete flood wall built by the city of Portsmouth, Ohio, and the other by the breaking of a levee. Cairo barely escaped inundation by a record crest of 60 feet only by a temporary raising of its flood wall that the city had erected at its own expense and by the opening of a floodway —part of the government's flood-control program on the Lower Mississippi —a comparatively short distance below the city.

At Pittsburgh, with a flood stage of 25 feet, a crest of 33 feet was reached in 1852 and one of 36 feet was recorded in 1907 and these were not exceeded until 1936 when a crest of 46 feet was reached. The rivers forming the Ohio at that city were somewhat outside the areas of heavy rains in 1937 and the record crest at the city was 34.5 feet, several feet below that of previous floods.

Early records are not available for a Cincinnati flood stage of 52 feet, but a crest of 71 feet is recorded for 1884 and this was topped by the crest of 80 feet in 1937, accounting for the great damage there in that year. At Louisville, the previous highest crest of 46.7 feet in 1884 was eclipsed by the crest of 57.4 feet in 1937. Both the business and residential sections of the city are on fairly level ground and much of these areas are below the crest of the 1937 flood which caused widespread damage throughout the city.

The oldest records for Chattanooga, flood stage 33 feet, show a record crest of 40.2 feet in 1882, with the highest since that date of 52.1 feet. In 1937 the crest was influenced by the completion of TVA's Norris dam at a cost of something more than $36,000,000.

Some of the losses to property located below previous flood records undoubtedly were owing to ignorance of historical data, but in many cases the risks were known and accepted deliberately on the assumption that losses from future floods would be offset by the benefits of the location.

With the advent of the steamboat to western waters in 1811 most of the traffic to and from the river towns was carried by them and it was desirable that the shippers and consignees be located near their landing places. When the railways came they naturally built into the same areas to be near the industrial and business sections and also for economical construction.

¶ "The *most serious flood damage is in the Central states, excluding the areas along the Mississippi below the mouth of the Ohio, where the high levees, built largely at government expense, have failed at various times. The current flood-control program there should furnish much greater protection to these areas and, in the circumstances, it seems just that the government should foot the bill.*"

This policy on the part of the railways was not confined to the early days of their development, as is seen in one with which the writer was familiar. Shortly before the flood of 1893 a railway extending from St. Louis northerly for 200 miles along the Mississippi, much of it on low ground, started construction of its own line for 50 miles northerly to replace operations over another line under a trackage agreement. Its new line and a large terminal yard in St. Louis were located near the river and I was on the engineering corps for the work.

The project was not completed in 1893 but the double-track main line had been laid across the low lands in the northern part of the city and into the hills to the north where filling material for the large terminal yard adjacent to the main line was obtained. These were below previous flood crests and were overflowed in 1893, but suffered little damage, aside from delay in grading for the yard and this was somewhat offset by the deposit of silt on its large area.

DURING the flood of 1903 I was in supervisory charge of track maintenance on all of this road. With a flood crest at St. Louis 2 feet higher than in 1893 the terminal yard and adjacent main tracks were again overflowed and the double-track main line lying between the Missouri and Mississippi rivers for 10 miles north of the crossing of the former was overflowed and had three short washouts caused by water from the Missouri. This put it out of service while waiting for the flood to subside and the rehabilitation of the tracks. Service was maintained by a temporary trackage agreement with another road for 32 miles and this cost was more than nullified by a trackage agreement for 70 miles over our line farther to the north.

After the flood was over the cost of rehabilitation was relatively small and it was conservatively estimated that the losses due to the two inundations were less than the cost of investment to have put the tracks above the crest of 1903.

The main track on our old line along the Mississippi was overflowed at various points to depths ranging from one to 3 feet but no damage was done except for the slowing of speed over the submerged portions, aggregating some 50 miles, and a suspension of traffic one night as a matter of precaution until a careful inspection could be made of the overflowed sections by daylight. Operation over these portions was feasible so long as the water could not reach the fireboxes of the locomotives and that stage was not attained in 1903.

THE experience at St. Louis with a crest of 38 feet, 4 feet below the highest known crest in 1785, demonstrated that the gamble was not a losing venture in view of the fact that the crest of 1785 has not been reached in the intervening 156 years.

If the nation is to pay all but a small portion of the costs of flood protection whether or not they are in areas known to be below flood crests in their early settlement, then the country is to spend many millions of dollars to protect those who gambled on the chance from their own mistakes. An all too rare example of self reliance in this respect is illustrated by the Miami Conservancy District in Ohio where the flood of

1913 was estimated to have cost more than 360 lives and a loss of probably more than $100,000,000 in property damage in an area that included the thriving industrial city of Dayton.

The work, costing about $25,000,000, was financed by a bond issue subscribed to by residents and property owners in the flooded regions and consisted of the installation of several large storage dams with outlets which normally are left open during dry seasons and closed during periods of heavy rains to regulate the flow into the Miami river. Man-made restrictions of the channels were also corrected and the project was under the supervision of Arthur E. Morgan, a noted engineer long identified with successful solutions of drainage problems. It is interesting to note that while the dams also reduce the flow into the Ohio river when it is likely to be in flood, the Federal government contributed nothing to its costs, in direct contrast to the Muskingum flood-control project in the same state, where the costs of about $25,000,000 are being met by the government.

THE *Engineering News-Record* of March 11, 1937, shortly after the great floods on the Ohio and Lower Mississippi rivers, stated the case succinctly in an editorial that should be heeded by all who may be affected adversely by the government's assumption of the major costs of flood control.

The following gem of logic is quoted from the editorial:

> Rivers were here long before man and for untold ages every stream has periodically exercised its right to expand when carrying more than normal flow. Man's error has not been the neglect of flood-control measures but his refusal to recognize the rights of the rivers to their floodways.

If the basic truth in this quotation be recognized, the government's cost for flood control can be greatly reduced and much of the losses to those who have deliberately exposed themselves to damage from overflows will be borne by them, as is just and proper.

Natural Gas Industry Prepared

"OUR [natural gas industry] preparedness exists because physical, financial, and technical developments were made possible in an economy that encourages private capital and individual initiative. Because of this preparedness the government is free, so far as the natural gas industry is concerned, to devote its energy to direct production of armament and training of man power. Major capital expenditures by government for furnishing power, fuel, energy to turn the wheels in the defense program are unnecessary. The money has already been spent. Facilities are adequate."

—W. B. HEAD,
Houston Gas Company executive.

Wire and Wireless Communication

STARTING July 1st commercial television went on the air. Leading telecasters were obliged to take a gamble on the future in order to hold or command operating rights in the new entertainment field. The Columbia Broadcasting System, for example, was obliged to begin a 15-hour-week program in order to hold its rights to channel No. 2, even though the limited number of television receiving sets in the New York city area (or any other area, for that matter) are mostly keyed to channel No. 1, held by the National Broadcasting Company.

Furthermore, both the sale of new receiving sets and the adjustment of outstanding receiving sets are blocked because of the defense program, which is taking up virtually all of the materiel and technicians which the radio industry can employ.

Nevertheless, the industry is going ahead on a limited basis, which for the present will be chiefly a matter of "getting practice." Both CBS and NBC will start out with a series of relatively inexpensive programs. There is a firm belief throughout the trade that television will eventually become one of the big industries and will inevitably supplant radio broadcasting.

Radio Corporation of America announced that applications have been filed for commercial television stations in New York, Philadelphia, and Washington. The Federal Communications Commission has approved the NBC applications for New York. The Washington station is expected to begin testing in November and be ready for commercial service on March 1, 1942. It is expected that the Philadelphia station will be in operation July 1, 1942.

IT is felt within the industry that in order for companies to maintain their position in the field, such a step must be taken at this time, even though it means a very limited return on investment for some time to come. To protect their already substantial investment, additional money must be spent to build up television programs in the interest of commercial television.

While under the commercialization privileges granted by the FCC sponsorship of television programs is permitted, belief is that advertising revenue accruing to the telecasters will be small due to the limited market available to sponsors.

Estimates are that in the New York area, where television has progressed furthest to date, there are about 3,000 television receivers in the hands of the public. It is estimated that about 16 per cent of the nation's 54,000,000 radio receivers are located in the metropolitan area. Possibility that television receiver production could be increased if public demand can be created by the programs seems to be precluded by the problem of metal and material priorities brought on by the national defense program.

Because of the priorities the radio receiver manufacturing industry is considering a cut in output of about 25 per cent and perhaps greater in certain instances. Because television receivers contain both

television and radio reception equipment, priorities have an even greater effect on television sets than on radios. One large manufacturer of radio receivers was reported to have on hand component parts sufficient to make about a thousand television receivers.

THE trade believes television eventually will grow as radio broadcasting did following the last war. NBC, with stations in New York, Philadelphia, and Washington, would have the nucleus for a television network. A coaxial cable is already in place between New York and Philadelphia which could be used. RCA has developed a radio relay system which could be used for network television programs.

While 18 channels are available to each service area, under present design of television receivers, only 7 channels are feasible for commercial operation in the New York area. This is due to the wide spread in megacycles between the channels.

In the New York area, NBC has the number one channel commercially, CBS number two, Dumont number four, Bamberger Broadcasting six, Metropolitan Television, channel eight shared with an NBC portable mobile transmitter; Dumont portable has the number sixteen, and both CBS and NBC have number eighteen for portable transmission.

* * * *

BELIEF prevails in Washington that the Senate Interstate Commerce subcommittee, which has been inquiring into the question of permitting a merger of Western Union and the Postal Telegraph Company, will approve such "permissive" legislation, but will take its own time about reporting any legislation. It is also felt that in view of the demands of labor and other interests for special protection, the Senate committee, when it does report a "permissive" bill, will pass the buck to the FCC by making that commission responsible for the approval of a satisfactory merger plan.

The hearings have been over for several weeks and Chairman Wheeler (Senator from Montana) recently said he did not know when the group would get around to taking up the proposition in executive session. In the meantime, the Interstate Commerce Committee had taken up the proposal to investigate the Federal Communications Commission, which was occupying all of its time.

Chairman Fly of the FCC has asked for legislation which would permit a merger of the two big domestic telegraph companies and this has been strongly endorsed by President Chinlund of Postal. Western Union was less ardent in its support.

Members of the subcommittee are Senators Wheeler, White, McFarland, Stewart, and Toby. Senator Brooks may replace Mr. Toby. Senator White, who is generally recognized as the leading congressional authority on the subject of communications, was said to be in favor of the merger, and it is always possible that weight given his views will counteract the other factors.

CHAIRMAN Fly took the position the radiotelegraph companies, which do mostly an international business, are cutting into the domestic telegraph companies' business. So, he said, were long-distance telephones, the teletypewriter, run by the telephone company, and air-mail letters. He presented an imposing array of figures showing how these agencies have cut into the earnings of the telegraph firms.

In the event of a merger, he suggested that radiotelegraph operation be confined to the international field and these companies merged also. This has been urged in the interest of national defense also. Foreign companies as a rule control their radio and cable outlets, and with several of them in the field it makes the United States more vulnerable from a communications standpoint.

In any case, such legislation as might be adopted would be only permissive and not mandatory, allowing the telegraph companies to get together if they could work out mutually agreeable terms. While it was generally assumed some accord could be reached if a merger were permitted, this was not at all a certainty.

The legislation would merely suspend the antitrust laws so far as they might apply to a merger of this type.

There were actually several proposals before the subcommittee. One involved just the merger of the two domestic telegraph companies. Another would also take in the telegraph apparatus of American Telephone and Telegraph, such as its teletypewriters, which, the FCC said, provide serious competition to Western Union and Postal. A third proposition involved, in addition, creation through merger of a single international radiotelegraph company. There were almost endless alternatives and combinations which conceivably might be considered. But the problem of Western Union and Postal alone was the chief one, and a merger of these two was the main goal.

Chairman Fly proposed that they be combined into a single new company, without holding companies, which would purchase the property of the existing firms through transfer of stocks or bonds in the new corporation. Any such arrangement would have to be worked out between the two, with the approval of the FCC.

WESTERN Union's plant had a 1940 book worth (its land lines less depreciation) of $235,000,000. Its cable property was valued at $8,000,000 additional. Postal Telegraph property, involving only land lines, was valued currently on the books at $41,300,000. The FCC, however, took the position that actual value was considerably less in both cases because of inadequate deductions for depreciation.

What a merger would really amount to would be that Western Union, whose plant would be maintained intact, would buy out Postal's annual gross income which is about $20,000,000. Postal operates consistently at a loss, but by saving plant and labor costs and increasing volume, the FCC figures a merged company could more than make up for this.

With regard to labor, the impetus for merger legislation first came from the American Communications Association, a CIO union, which has organized Postal Telegraph pretty effectively. This union is now vying with the AFL Commercial Telegraphers Union to organize Western Union employees. Because the outcome was still in doubt, neither union would commit itself on the merger question. The CIO unit contended the question of labor displacement resulting from a combination of the companies had not been adequately studied and that a plan, to be included in the legislation, to protect labor should be worked out before any action is taken.

* * * *

CHAIRMAN Burton K. Wheeler, Democrat of Montana, on June 21st said the Senate Interstate Commerce Committee would "give both sides time to cool off" while it delayed for two weeks further hearings on a proposal to investigate the Communications Commission and broadcasting in general.

The committee wound up a series of hearings with testimony of four radio station operators in opposition and one in support of the commission's new rules affecting broadcasting. Among other things, these rules would ban the optioning of time by local stations to the chains and would force NBC to dispose of one of its two networks.

Wheeler said the committee would resume its investigation of the new regulations about July 7th, when Chairman James L. Fly of the FCC was expected to testify in rebuttal to some of the charges made against the board.

* * * *

OUT of the maze of cross-currents emanating from the hearing at Washington on the White resolution for an investigation of the FCC, comes the rumor that radio will take unto itself a "czar" of the Will Hayes type. Indications that such a move is under way have been seen in both CBS and NBC headquarters, *Variety* says — indications which grow stronger with each meeting of the broadcasters in Washington.

Several names have been discussed for this post. And the one most frequently mentioned is that of James A. Farley,

former Post Master General. The networks believe that the most they can expect from the hearing is a suggestion that they get together with the FCC and come to an agreement on the rulings. For such conferences, the networks would like to be equipped with a middleman of national prestige who would act as spokesman. But one difficulty is that Mutual, which is in accord with the FCC rulings, would not be agreeable.

* * * *

WALTER S. Gifford, president of American Telephone and Telegraph Company, on June 25th predicted the company's expansion program would call for more money than the $234,000,000 to be raised by the sale of a convertible debenture issue. Speaking at a special stockholders' meeting, which approved the proposed issue, Gifford said the company expected to need a great deal of money this year and possibly for two more years.

"If we want some more money next year, and we will want some at the rate we are going," Gifford said, "we could get another $100,000,000 whenever the conversion privilege was exercised and thus we would be raising something over $300,000,000 by selling the present convertible issue."

The new debentures will be convertible into common stock by payment of the difference between the $100 face value and the convertible price set for the stock. The stockholders approved the new debentures by an overwhelming vote.

* * * *

As a by-product of the $14,000,000 toll rate cut recently approved by the FCC, for the Bell system, a number of associated Bell companies will probably reduce intrastate toll rates to conform with the new level. The state commissions have been generally successful in bringing about such "conformity" reductions in the case of previous long-distance toll rate cuts. However, the recent $14,000,000 toll rate slash is not so likely to affect intrastate tolls since the bulk of the reduction applies to "overtime" charges on calls exceeding 144 miles but less than 1,530 miles.

* * * *

THE House of Representatives by a close vote (146-154) defeated the Hobbs bill to legalize the use of evidence obtained through telephone or telegraph wire tapping by the Justice Department. This probably means an end to attempts in this session to authorize wire tapping. Administration supporters of the Hobbs bill have themselves to blame, since they helped defeat (123-169) the Walter amendment for a more conservative wire-tapping bill. Thus, on the final vote the supporters of the Walter measure joined forces with those who were against both bills to bring about the defeat of the Hobbs bill. It is hardly possible that the differences between the two bills can be settled in time for further action this year.

* * * *

THE term of Frederick I. Thompson, Alabama newspaper publisher, as a member of the FCC expired this week without reappointment. It was believed likely that the President would not act hurriedly to fill this vacancy until some disposition is made of the FCC-radio investigation now before the Senate Interstate Commerce Committee. There were rumors that Chairman Fly might be given another post in order to settle the radio row without shaking up the FCC or drastic overhauling of the Communications Act at this time.

* * * *

THE tax bill tentatively agreed upon by the House Ways and Means Committee retains a 5 per cent excise tax on telephone bills, estimated to produce an annual yield of $28,600,000. The bill also lowers the exemption on long-distance telephone calls and telegrams from 50 cents to 25 cents and imposes the following tax: 5 cents on messages from 25 cents to 49 cents, and another 5-cent tax on each additional 50 cents or fraction thereof. This toll tax is estimated to yield approximately $35,000,000 a year.

Financial News and Comment

By OWEN ELY

New England Public Service Company

New England Public Service Company (hereafter referred to as NEPSCO) is a holding company with interests almost entirely in New England. Its major problem under the Holding Company Act is corporate simplification of the top companies, rather than geographical integration. Of the total voting stock (owing to dividend arrears, all preferred issues now share in voting rights) about 24 per cent is owned by Northern New England Company (an inactive company controlled by NEPSCO personnel) and similar-sized blocks are controlled directly and indirectly by Manufacturers Trust Company (which the SEC has ruled can be held for the present) and by a subsidiary of General Electric. GE interests are also reported to own a substantial amount of prior lien preferred and junior preferred stocks. NEPSCO was formed by Insull's Middle West Utilities Company in 1925 but control passed into the hands of New England and New York interests in 1932, since which time a considerable program of rehabilitation has been carried out.

About 60 per cent of generating capacity is hydroelectric, and there are undeveloped sites with an estimated capacity several times that now developed. About 92 per cent of system revenues ($24,106,185 in 1940) are derived from electricity, about 3 per cent each from gas and traction, and the balance from miscellaneous.

So far as utility relationships are concerned, the set-up is simple, NEPSCO owning practically the entire common stock of five operating companies (one of which, Twin State Gas & Electric, will probably be dissolved, with the properties divided between two others of the group). There are also several smaller subsidiaries of no special importance.

A complicating factor, however, is the ownership of nearly all the stock of New England Industries which, in turn, controls (through 67-95 per cent stock interest) five textile companies and one paper company, all located in Maine. The textile mills have about 10 per cent of the total spindle capacity of New England.

The principal cash earnings of the parent company in 1940 were obtained from common dividends paid by Cumberland County Power & Light and Public Service Company of New Hampshire, total receipts being about one-third of the equity earnings of the utility group as a whole. While the industrial companies were good earners in the early 1920's and some of them continued to pay dividends later, they have been "in the red" in recent years and have drawn on NEPSCO for funds. Bank loans have been incurred which must be cleared up before cash can be transferred to New England Industries and thence to NEPSCO. However, operations, are now improving very rapidly; interim figures are not published, but system net from all sources in the first five months of this year is said to be running at over double that of last year, principally due to the industrial group.

Over a period of time, this remarkable rate of gain should either permit liquidation of bank loans or a sale of NEPSCO's industrial interest at a reasonable figure—possibly enough to reimburse the latter for the cash it has sunk

in the properties ($5,379,000 plus $3,155,611 accrued interest).

NEPSCO has no funded debt of its own, but has six issues of preferred stock, plus the common. The 180,000 shares of $6 and $7 prior preferred stock with arrears of around $59 and $50, respectively, appear to have the major claim on assets and earnings. The SEC has indicated that the management should either put the company on a common stock basis or dissolve it; possibly an exchange of stock might be carried out as a preliminary step to dissolution. Following precedent in the Community Water Case, the junior preferred might receive recognition—possibly as much as 10-20 per cent equity interest—but the common, which still holds voting control, will obviously have to be satisfied with little or nothing.

The fact that a majority of the common is held by three groups might tend to defer recapitalization plans (unless the SEC brings pressure to bear) since the current rapid increase in earnings would naturally stimulate hopes for some participation in the plan. On the other hand the prior preferred stockholders, though less well organized, will naturally be anxious to consummate a plan as soon as practicable in order to obtain larger current dividends (half the regular rate has been paid since December, 1939) or to "cash in" on arrears in some way.

THE accompanying table indicates that prior lien preferred stockholders have been fairly patient in waiting for payments, since dividends have been fully earned on a consolidated basis in all years except 1933-5. The controlling common stock interests have naturally been interested in rehabilitating and improving both utility and industrial units, and earnings (plus bank borrowings) have been devoted largely to that purpose over the past eight years.

The largest of the utility subsidiaries, Central Maine Power Company, cleared up its own preferred arrears at the end of 1939 and $5.82 was earned on its common stock in 1940 (equivalent to about $4.50 on NEPSCO prior preferred), but most of the 1940 earnings were devoted to clearing away bank loans. Unless the SEC objects (owing to the funded debt ratio being above 50 per cent), some 1941 payment to NEPSCO would seem logical.

Public Service of New Hampshire, second largest earner, contributed only about half its common stock earnings to the parent company during 1939-40, but still was forced to increase its bank borrowings; Cumberland County Power & Light, a regular contributor, paid heavily out of surplus in 1938 and withheld only a moderate amount of earnings in 1939-40. Central Vermont Public Service and Twin State Gas & Electric have paid nothing to NEPSCO since 1935, presumably due to bank loans.

NEPSCO $7 prior lien preferred stock is currently selling around 67, to yield about 5.2 per cent. Considering the fact that power gains are running higher in New England than in any other section of the country and that the textile and paper boom may continue during 1942, patient holders of the stock seem likely to benefit substantially if and when capitalization or dissolution is effected.

RECORD OF NEPSCO $7 PRIOR LIEN PREFERRED STOCK

	Earnings per Share		*Dividend Paid, Prior*	*Approx. Range*
	Parent Co.	*System*	*Preferred*	*Over-the-*
Year	*Only*	*Equity*	*No. 7*	*counter*
1940	$3.42	$12.71	$3.50	74- 50
1939	2.80	13.75	.87½	72- 34
1938	3.33	7.00	...	40- 23
1937	.49	12.84	...	78- 33
1936	.33	9.42	...	63- 39
1935	1.99	4.26	...	33- 7
1934	2.72	5.03	...	23- 8
1933	2.43	6.48	...	31- 12
1932	5.82	10.86	1.75	64- 7
1931	18.43	17.35	7.00	99- 94
1930	22.01	24.80	7.00	105- 96
1929	25.17	33.38	7.00	105- 97
1928	22.90	31.75	7.00	109-105
1927	16.27	24.60	7.00	104-100

Mixed Results for Competitive Bidding

COMPETITIVE bidding got off to a slow start June 23rd when New York State Electric & Gas rejected all bids for its $35,393,000 bonds because no bids had been received for 120,000 shares of preferred stock. Sale of each block of securities was contingent on the sale of the other, but "all or none" bids for both issues had been ruled out. The preferred stock was perhaps somewhat unpopular because a $5 dividend rate had been fixed, while a state law prevented wholesaling stock at less than 100, which would mean retailing it to yield well under 5 per cent—impracticable for this Associated Gas subsidiary. Someone—the company, the SEC, or the New York commission—was to blame for figuring too closely on the issue; and this illustrates one weakness of competitive bidding, for if the bankers had been consulted in advance they would doubtless have pointed this out to the company and, consequently, the offering would not have been a "flop."

Moreover, there was apparently no good reason why "all or none" bids could not have been received, in which case buyers could have adjusted their bond bids to offset the unattractive character of the preferred stock. However, the company solved the difficulty three days later, after consulting with the SEC, by accepting the best of the four bond bids (that of The Equitable Life Assurance Society) and readvertising for bids on the preferred issue, on which the dividend rate could be raised to 5¼ per cent; the stock was finally wholesaled at 100.85, with a 5 per cent coupon.

THE second test of the competitive bidding principle proved more successful: The Philadelphia Company's $48,000,000 collateral 4¼s were sold to a Kuhn Loeb-Smith Barney syndicate and the $12,000,000 collateral serial 2⅝s to a Mellon-First Boston group on June 24th, and two days later the public offerings proved quite successful.

With The Philadelphia Company financing satisfactorily accomplished, it is expected that Duquesne Light will soon seek a refunding of its $70,000,000 3½s, currently selling around 105½, callable at 104¾.

(Sometime ago the bonds were around 107½ and sold as high as 109 earlier this year.)

A further test of competitive bidding, as applied to common stocks, is currently being made by Standard Gas and Electric which on June 24th advertised for bids on its remaining holdings of 590,527 shares of San Diego Gas & Electric (the balance having been disposed of in exchange for its own bonds under a long-standing offer). The bids would be opened on July 8th. The stock is currently quoted around 14, or about eight times current earnings ($1.77 for the twelve months ended March 31st, which may be reduced about 7 cents by a 30-cent normal tax). Allowing for nonrecurring tax savings, however, the stock is selling around ten times earnings

American Telephone has now filed its huge offering of $233,584,900 convertible debentures. Stockholders of record July 25th will be given rights expiring August 29th. Any bonds not taken by the stockholders will be canceled, and there will be no underwriting. Part of the funds will probably be used to redeem $94,547,000 debenture 5½s with the balance applied to the Bell system's huge construction program (more than $400,000,000 in 1941).

SEC hearings are now in progress on the $91,878,000 Alabama Power refunding operation, registered June 12th: it is not yet clear whether the issue will be released for competitive bidding.

The $132,000,000 Columbia Gas financing, registered April 10th for offering by Morgan Stanley, seems to be having "hard sledding" and, while some progress has been made in clearing up troublesome questions, the issue does not appear slated for early release.

Other "unfinished business" on the SEC calendar are the common stock offerings of Northern Natural Gas and

Cincinnati & Suburban Bell Telephone, both registered in April.

New Styles in Integration

As in any experimental process, efforts to apply the SEC interpretation of § 11 are constantly taking new turns, and "new styles" in integration are not infrequent. In the beginning the view was widely held that the holding companies would "swap" outlying properties for others nearer home, and thus round out their holdings on a geographically centralized basis, but this jig-saw method has apparently proved undesirable or unworkable.

Later, the SEC encouraged the idea of selling the operating companies back to the public, particularly the local investors in the area served, and this idea may have tinged their views regarding competitive bidding. They apparently felt that competitive bidding would help to break up monopolistic banking conditions and give the small interior banking houses a better chance to finance their local companies. Actually, as this department pointed out sometime ago, competitive bidding may have exactly the reverse effect, strengthening still further the position of the New York bankers—and events thus far seem to bear this out.

More recently, the SEC decided—possibly due to the declining trend of utility stocks and adverse war-time conditions — that the most feasible method to divorce the holding companies from their superfluous investments would be to distribute the latter pro rata to security holders; this was emphasized in Mr. Eicher's recent address. This method, in some cases at least, avoids the troublesome capital-gains-tax problem involved in a cash sale.

The last-named method has not been fully tested as yet. Where a distribution is made to common stockholders—*i.e.*, where the holding company has only one class of security outstanding—the operation is simple enough; but unfortunately most of the holding companies have to rid themselves of bonds or preferred stocks before remaining assets can be distributed to the equity holders. And when these securities are selling below par, some owners always remain hopeful that the last "hold-outs" will receive par, or possibly the redemption price plus any arrears. The offer must, therefore, be made especially attractive to insure a wide response.

Standard Gas & Electric failed to make its exchange offer—San Diego stock for its own bonds—outstandingly attractive and now has called for bids (returnable July 8th) on the unexchanged 59 per cent of its stock holdings. The plan was first broached about a year ago and went into effect August 26th, so that ample time has been allowed for holders to make up their minds. Unfortunately they were asked to accept a slightly reduced income, the subsidiary was not particularly well known (though its record was good), and the organized aid of underwriting houses or other Wall Street specialists was not sought. Presumably Standard Gas did not wish to improve the exchange terms later because of fear that those who accepted them earlier would feel imposed upon.

Two other important exchanges have recently been proposed, although the exact terms have not yet been released. The SEC has refused to hear the expert evidence Commonwealth & Southern wished to present to justify retention of a substantial amount of preferred stock, and has reiterated its opinion that capitalization should be reduced to a single class of stock. Commonwealth now plans to offer to its preferred stockholders practically the entire common stock of its five northern companies—Consumers Power, Ohio Edison, Pennsylvania Power, Central Illinois Light, and Southern Indiana Gas & Electric. These companies all have good earnings records with no preferred arrears; hence, earnings can fairly be capitalized for at least eight to ten times 1940 earnings. At eight times, the resulting equity would amount to about $65 a share for Commonwealth preferred; at ten times, to about

$80 a share (the stock is currently selling around 65). Possibly a multiplier of eleven or twelve would be warranted, but the experience with San Diego Gas & Electric and Indianapolis Power & Light indicates that allowance must be made for market "seasoning." The liquidating value of Commonwealth preferred, based on the entire system holdings, was estimated in March by Standard Statistics at $137 per share, but a bulletin issued June 19th reduced the figure to $130 and (after allowance for 20 per cent possible shrinkage) to $102.

On June 20th, National Power & Light filed with the SEC a tentative plan to offer all of the 500,000 common shares of Houston Lighting & Power in return for its own 279,716 shares of $6 preferred stock. After receiving SEC approval, the exchange will be made either directly or through arrangement with underwriting houses. (Possibly Standard Gas' experience has demonstrated the need for expert aid, or underwriting.)

On the basis of outstanding shares, about 1.79 shares of Houston would be offered for one share of National preferred. Using a multiplier of ten for the latest earnings, $6.33 for the year ended April 30th, the Houston would be worth about 53, and the 1.8 shares about 96, compared with the current market price for the preferred of 99 and the call price of 110 (in liquidation, only 100).

Eleven times earnings would make the Houston worth about 105 and twelve times, 114; but in view of the fact that Houston's rates have been reduced and taxes are increasing, it seems a little doubtful whether a higher ratio than ten is applicable, and hence the offer does not seem particularly generous; but the fact that the preferred is close to its dissolution value may be counted on to help persuade holders to convert.

As the Houston property was acquired by National many years ago and cost is considerably below present market value, the holding company can make sizeable savings in taxes by effecting an exchange in lieu of a cash sale.

"Customer Ownership" Financing Revived

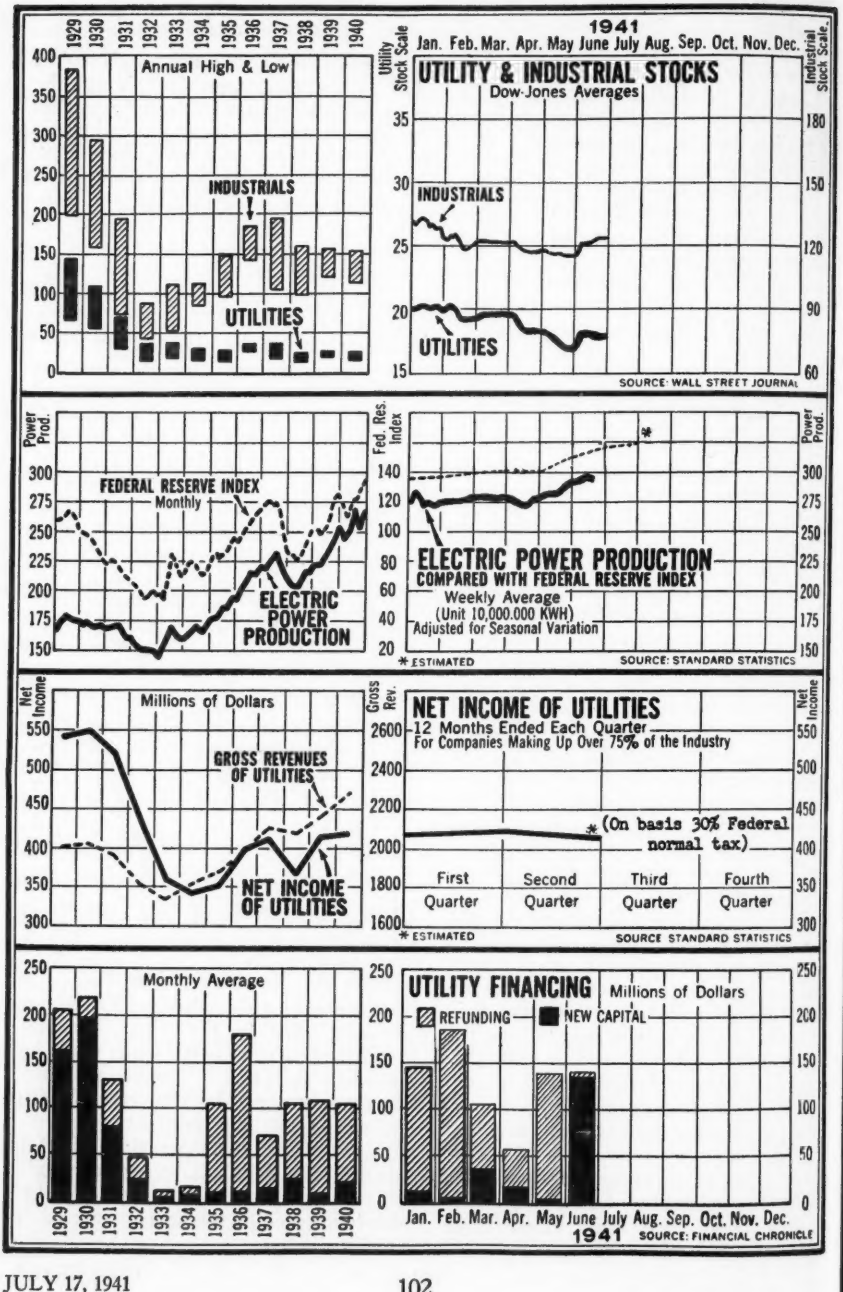
During the 1920's much was heard of "customer ownership," though the term was sometimes misleading in that the security distributions consisted largely of preferred stocks, frequently with no voting power. It seems doubtful if any effort was made to distribute common stocks among customers, except perhaps in New England.

Pacific Gas and Electric, one of the earliest proponents of this method of financing, sold some $76,000,000 of voting preferred stocks, without benefit of underwriters, during 1914-32. The company now plans to sell 400,000 shares of its $1.25 first preferred stock direct to the public, including customers and employees. The issue has been filed with the California commission and will later be registered with the SEC.

Presumably one reason for the decline in this method of financing was the passage of the Securities and Exchange Act, and the necessity for distributing prospectuses to all customer-buyers; also, the danger that employees might make overoptimistic statements in pressing sales. However, the possibility of false representation would seem far less in the case of a high-grade preferred issue than if common stock were being distributed.

Can SEC Override Majority Stock?

Some clarification of SEC powers is expected in the forthcoming Federal court decision on the SEC's attempt to restrain the North American Company from dissolving a subsidiary. The major issue is whether the SEC has authority to blueprint every move made by a holding company to comply with the "death sentence." In this case, North American owns 83.49 per cent of the voting stock of the North American Light & Power. The SEC, however, contends that minority stockholders would be adversely affected by the parent company's dissolution plan.


1929 1930 1931 1932 1933 1934 1935 1936 1937 1938 1939 1940
Annual High & Low
INDUSTRIALS
UTILITIES
1941
Jan. Feb. Mar. Apr. May June July Aug. Sep. Oct. Nov. Dec.
Utility Stock Scale
Industrial Stock Scale
UTILITY & INDUSTRIAL STOCKS
Dow-Jones Averages
INDUSTRIALS
UTILITIES
SOURCE: WALL STREET JOURNAL
Power Prod.
FEDERAL RESERVE INDEX
Monthly
ELECTRIC POWER PRODUCTION
Fed. Res. Index
ELECTRIC POWER PRODUCTION
COMPARED WITH FEDERAL RESERVE INDEX
Weekly Average
(Unit 10,000,000 KWH)
Adjusted for Seasonal Variation
* ESTIMATED
SOURCE: STANDARD STATISTICS
Net Income
Millions of Dollars
GROSS REVENUES OF UTILITIES
NET INCOME OF UTILITIES
Gross Rev.
NET INCOME OF UTILITIES
12 Months Ended Each Quarter
For Companies Making Up Over 75% of the Industry
(On basis 30% Federal normal tax)
First Quarter
Second Quarter
Third Quarter
Fourth Quarter
* ESTIMATED
SOURCE STANDARD STATISTICS
Monthly Average
UTILITY FINANCING
Millions of Dollars
REFUNDING
NEW CAPITAL
Jan. Feb. Mar. Apr. May June July Aug. Sep. Oct. Nov. Dec.
1941
SOURCE: FINANCIAL CHRONICLE

What Others Think

The Right to Strike and Public Ownership

DIRECT prohibition of strikes in public employment does not seem to exist in the United States. However, statutes of a different sort, such as one aimed at conspiracy to obstruct the mails, have occasionally been used to exercise pressure against the striking of employees of a governmental agency.

Dr. David Ziskind, in "One Thousand Strikes of Government Employees" (New York, 1940), compiled an account of 1,116 strikes of government employees, going back to 1835. Of the total, 644 have been on public employment programs since 1935. These are hardly in point because such strikes were generally directed against construction contractors or subcontractors, and only indirectly against the Federal government or some political subdivision.

Included in Dr. Ziskind's impressive compilation were 114 strikes on publicly owned utilities. Forty-six of these were against the U. S. Railroad Administration during the period of Federal government operation of the roads during World War I. Three involved municipally owned street car systems. In the San Francisco general strike of 1937, employees of the municipal street car line walked out for a short while, but partial service was quickly restored. Two minor strikes are listed for the Detroit municipally owned street railway system. In New York city, the Transport Workers Union (CIO) declared that the city board of transportation recognized strikes in various shops and barns of the municipal transportation system.

"THE courts," according to Dr. Ziskind, "have never passed directly upon the right of government employees to strike." But there is certainly a presumption of illegality recently dramatized by the differences between the Transport Workers Union and the New York city subway system. The LaGuardia administration has taken the position that the city's board of transportation cannot, under the civil service statutes of New York, recognize exclusive collective bargaining by an outside union.

Arthur W. MacMahon, in the June issue of *Political Science Quarterly*, comments on this assumption of illegality as follows:

> But whether real or supposed, the assumption of illegality, if widely held, is likely to be a potent factor in the public's attitude. Unions of civil servants have not stressed the right to strike; many expressly renounce it in their constitutions. Strikes in public service have occurred. Prohibitions could not prevent strikes, granted the willingness of determined men to risk the consequences. Still less could thundered commands avoid the withdrawal of zeal while men's bodies remained at their posts. The state, of course, must have assured means for maintaining its existence and the elementary conditions of safety and order. Its safeguard in these matters is a military arm unquestionably loyal to duly constituted political authority. The conditions in the civilian services point, not to stern negations, but to positive preventives. It is perhaps significant in the New York city transit field that union literature in recent years has sometimes seemed to find a model in the theory and methods of labor adjustment now in existence for the railroads of the country.
>
> For activities that are peculiarly indispensable, where the injury to the beneficiaries of the service is immediate, inescapable, and profound, a condition tends to arise in which the right to strike is neither denied nor utilized. The situation involves elements of balance that elude formal statement. The condition seems unworkable to those who insist on logically tight systems. Yet free institutions rest in part on just this sort of equilibrium; the ability to make it workable was never more important than now.

In a letter to Mayor LaGuardia, CIO President Philip A. Murray wrote:

It seems to me that in denying employees on the city-owned transit lines the right to collective bargaining, you have lost sight of factors which should have led you to a different conclusion. The operation of transit lines is not like the maintenance of the police or fire departments. The latter constitutes the performance of a governmental function. The operation of a transit line is a business enterprise. It is a commercial venture in which money may be made or lost. It renders a service for which each patron pays as he rides. No other municipal service is comparable to the transit service.

THE city has belittled this distinction between "governmental" and "proprietary" functions. City spokesmen say it is unreal to attribute private (as opposed to public) benefit to the governmental operation of an electrical utility, although there may be important group differences between the public as taxpayer and as purchaser of electricity. Mr. MacMahon, analyzing the New York city transportation system in the *Political Science Quarterly* article, suggests: "The sounder grounds for giving a distinctive position to the commercial activities of government are broadly administrative, turning on the needs that arise when the state enters the market place to supply a commodity or a service for a price." Mr. MacMahon continued:

It must be admitted that, just as it is unreal to bundle all types of governmental activity in the same category, it would be oversimplification to prescribe for public enterprise as if its manifestations and requirements were all alike. Thus an affair like the rapid transit network—now nearly as indispensable as the streets themselves, subsidized to make possible a 5-cent fare, to which the whole life of the metropolis is geared and on which its tempo completely depends—may differ importantly from an industry conducted by government on a shifting price in an ever-changing market.

Rigidity of statement on this matter, such as now appears in New York city's arguments, is disturbing when considered in the face of the possible, even probable, extension of government's economic functions. An extreme application of civil service, with drastic emphasis upon the idea of status, might reduce large areas of the labor movement to a shadow. To say that perfected public administration can be relied upon to consider the interests of all classes is well taken in part but may slight two considerations. First, whatever the ownership, there are inherent problems in the relation of management and men that can hardly be satisfactorily adjusted in an atmosphere of undisputed authority. Second, if totalitarian types of social structure are to be avoided, a truly autonomous labor movement is an element to be conserved even at the cost of much inconvenience.

OF course, the legal question, whether New York city has power to recognize a closed shop union (and, impliedly, the right of its employees to strike), is complicated by the applicable civil service law of New York state. But regardless of whether employees of a publicly owned utility (Federal, state, or municipal) may strike, as an abstract legal proposition, other governmental agencies than New York city have not hesitated to deal with the unions. Listing examples of such union recognition by public agencies operating public service facilities, the strongly pro-labor New York city newspaper, *PM,* stated in its edition of June 16th:

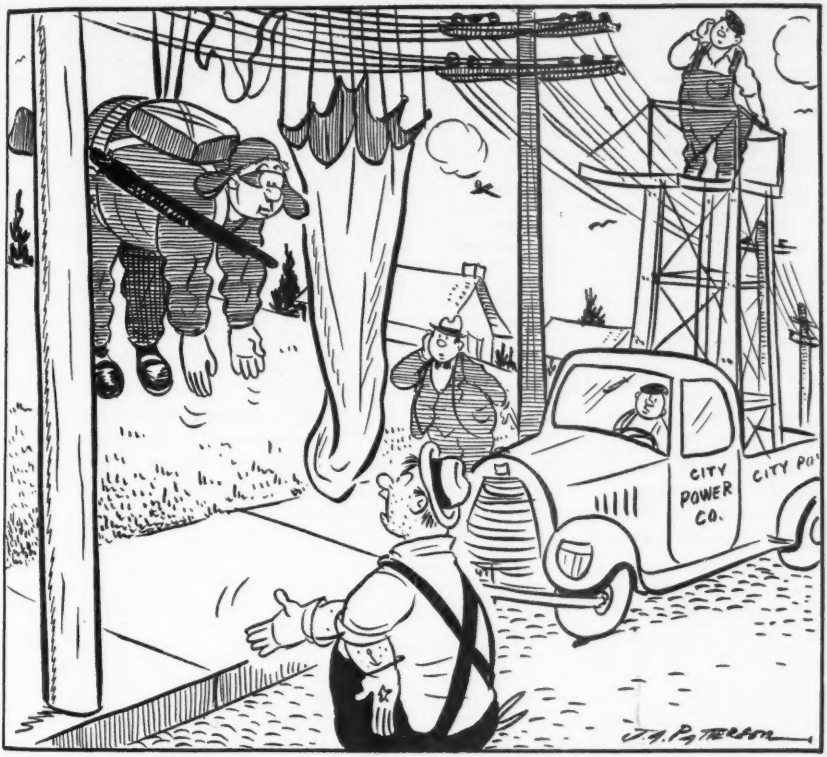
TVA operates under a signed contract with 15 AFL unions covering 8,000 building and metal trade workers.

The Inland Waterways Corporation—another Federal agency—carries on work even more comparable to the operation of the board of transportation. Hundreds of longshoremen and seamen are employed by it on 1,000 miles of barge lines on the Mississippi and its tributaries. Inland Waterways deals with them under contracts with the AFL International Longshoremen's Union and the CIO National Maritime Union.

Since 1939 the railroad service employees of the Alaska Railroad — also a Federal agency — have worked under the standard collective agreement of the railroad brotherhoods. Two years before, the Alaska Railroad had already signed agreements as to working conditions with the American Federation of Government Employees covering employees as varied as telephone and telegraph workers, clerical workers, hotel workers at Curry, Alaska, and workers in the mechanical departments of the railroad.

Cities, large and small, have made collective bargaining agreements with labor unions.

Both Philadelphia and Niagara Falls, New York, have made contracts with the American Federation of State, County, and Municipal Employees covering all city departments in which the union is the majority choice. The CIO State, County, and Municipal Workers Union have won agreements with Muncie, Indiana, for general municipal



"IT WAS BAD ENOUGH WITH CATS AND KITES; NOW IT'S YOU GUYS"

workers and with Keokuk, Iowa, for employees of the municipal water system.

For years publicly owned and operated street railways in Detroit and Seattle have been operated under agreements with the Amalgamated Association of Street Electric Railway and Motor Coach Employees of America. So has Boston's publicly operated street car, elevated, and subway system.

This does not begin to exhaust the list.

The fact of the matter is that the last few years have seen a steady increase in the number of governmental agencies dealing with their employees through collective bargaining.

Nor has the line been drawn between those communities that have and those that do not have civil service.

TVA for all practical purposes administers its own civil service system.

Philadelphia functions under a civil service system like that in New York. And Niagara Falls, of course, is subject to the same civil service law as is the board of transportation.

The *PM* article goes on to point out that organized labor has achieved a new status in the United States. Until fairly recent years it was the practice of private management in railroads and other lines of industry to resist collective bargaining. With the enactment of the National Labor Relations Act, in the opinion of *PM*, the American people set their seal of approval upon collective bargaining with the result that public as well as private employees were given reason to expect government protection of their rights to bargain. *PM* continued:

> The business of government has expanded enormously. And with that expansion the number of public employees has increased correspondingly. Today the Federal government has over 1,000,000 workers on its civilian payrolls. States, cities, and counties have more than 2,000,000.

Government has become the biggest employer in the country.

What is more to the point, it has increasingly taken over the functions traditionally associated with private enterprise. TVA, Bonneville, Grand Coulee, and Boulder dam mean the Federal government has gone into the business of producing and selling electricity. Unmistakable is the trend toward municipal ownership and operation of public utilities. Public development and administration of low-cost housing has opened a new, and as yet hardly scratched, field of public operation. Besides these and many other "normal" developments, the national defense program may—if our experience in the last war is any guide—require the setting up of special government agencies, such as the U. S. Spruce Production Corp.

IT would seem to the neutral observer that the difficulty of distinguishing between the rights of government and the rights of employees is going to be emphasized rather than clarified by this trend towards increased public employment. Surely, *all* employees of the government cannot be given the right to strike or to bargain about working conditions and wages. Starting off with the extreme example of soldiers and sailors, and extending through such strictly governmental (in the old-fashioned sense) agencies as Coast Guard, Customs, Police, Health, and Forestry Service, we will see that a line has to be drawn somewhere between those who might properly walk off the job if conditions do not suit them and those who have to remain on the job as a matter of public duty whether they like it or not, and by compulsion if necessary.

Maybe, as Mr. MacMahon has stated, the old distinction between "proprietary" and "governmental" function is illusory. But until another one is found it seems to be about the only rational line of demarcation that can be made.

—F. X. W.

Will Utility Earnings Keep Pace with Operating Costs?

ALTHOUGH all forms of public utility enterprises—even the recently moribund urban transportation carriers—have shown increases in business as a result of the defense boom, higher costs and taxes are obviously running a close race with expanding gross revenues. Last year, for example, while electric utilities registered a 12 per cent increase in power sales, net operating income was virtually unchanged. The performance of gas and telephone companies showed a similar trend.

And how will this "race"—so vital to the stability of public service industry in America—come out? Will costs and taxes gain so fast on operating income that the credit structure of the utilities will be seriously undermined, if not permanently impaired? Or will increasing business, supplemented by price ceilings on such basic supplies as coal, enable the utilities to squeak through without default or numerous casualties in the bankruptcy courts?

So dizzy has been the pace of the defense program and so profound has been its impact on the social economic structure of the country as a whole that no one could presume to give a definite answer to such questions at this time. But Ernest R. Abrams, well-known author of "Power in Transition," and sometime contributor to the FORTNIGHTLY (see page 67), is certainly among the few qualified to venture a surmise along this line. At any rate, Mr. Abrams recently did so in *Barron's*, the national financial weekly (issue of June 2, 1941). Discounting increased labor costs, which he does not think figure heavily in the utility picture, but giving considerable weight to increased tax prospects, Mr. Abrams reached this conclusion:

> Electric utility operation and maintenance costs, depreciation, and taxes would have to increase as much as 23 per cent, or half again as much as the maximum increase during the last war, to wipe out common stock earnings.

These same costs will have to increase

30 per cent before the average balance for preferred stock dividends is eliminated. Finally, it would take 40 per cent increase in operating costs to begin inroads on the payment of fixed charges.

MR. Abrams pointed out in his *Barron's* article that during the last World War price controls on military essentials and civilian goods were not established until pretty late in the day. After we had been at war five months (September, 1917), only 3.7 per cent of essential commodities were price fixed. Even when the armistice was signed, fourteen months later, only 42 per cent had been "frozen." The writer stated:

> The effect of this delayed and uneven price control on public utilities, with their rates fixed by public contracts, will be evident from the experience of the 10 private utilities rendering electric and collateral public services in and around Baltimore, Boston, Chicago, Cleveland, Detroit, Los Angeles, Milwaukee, New York, San Francisco, and St. Louis. During 1915, the first full year after hostilities started abroad and sixteen months before American participation, their combined operating expenses, maintenance, depreciation, and taxes consumed 63.3 per cent of operating revenues, and in 1918 consumed 68.3 per cent. Since the impact of the war on labor, fuel, and material prices, and on taxes, did not end with the signing of the armistice, these costs increased to 73.2 per cent in 1920. To sum it all up, the combined operating costs of these 10 utilities were boosted nearly 8 per cent in three years, and more than 15½ per cent in five years.

Total electric sales increased more than twice as fast as revenues last year. We may find the proportion of electric output consumed by low-rate industrial consumers further increased over the next year, as residential consumption slows down to conserve fuel for defense industry. If increased quantities of electricity could be produced without added cost, electric utilities would have benefited quite a bit from last year's 6 per cent increase. Unfortunately, every additional kilowatt hour produced in 1940 required additional sums for labor and materials. Obviously, stand-by equipment, which is now being pressed into service, cannot be expected to generate as economically as the normal operating equipment.

Prices of fuel, labor, and materials increased during 1940 so that operating expenses and depreciation rose about 3½ per cent faster than operating revenues. Mr. Abrams continued:

> Up to this point, the increased expenses of electric utilities during 1940 do not appear especially serious, percentage-wise. But not so when we look at their tax bills. For governmental exactions during 1940 were 17.4 per cent higher than the year before, and consumed 18.20 cents of each dollar collected from electric consumers. . . . Enacted as an "emergency" tax in 1932 and supposed to expire in 1934, the Federal excise tax on electricity sold at retail was increased in July, 1940, to 3.33 per cent, from 3 per cent. Moreover the Federal income tax rate on corporations, which stood at approximately 16.5 per cent in 1939, was raised to 20.9 per cent in June and again to 24 per cent in October, 1940, the new rate in each case being retroactive to the start of the calendar year.
>
> Perhaps the impact of increased taxes on electric utility earnings last year can best be illustrated by comparing this tax increment with the increased revenues received just from commercial and industrial consumers. On one hand, the operating revenues arising from expanded business and industrial consumption in 1940—not the profits, but the gross proceeds derived from power sales to these users—were $65,000,000 higher than in 1939. But, on the other, 1940 governmental exactions, due primarily to increased Federal tax rates, were $61,000,000 greater than in the preceding year. In other words, increased taxes in 1940 were equivalent to almost 94 per cent of the proceeds derived from added power sales to business and industrial concerns benefiting from defense orders and activity.

AND what of the future? Will total costs continue to expand? For electric utilities this depends a good deal on the type of operation—hydro or steam. Right now, we have ample evidence of the fundamental weakness of hydro plants—low water and very expensive stand-by operating costs. But if the weakness of the hydro plant is physical, the vulnerable heel of the steam plant is economic; namely, the price of coal. Mr. Abrams concludes on this point:

> During 1940, the cost of fuel comprised 22 per cent of electric utility operating and maintenance expense, compared with 21 per cent in 1939. But, more important, fuel purchases in 1940 consumed 8.2 cents of each electric operating dollar, as against only 7.9

cents in the preceding year. . . . And with current fuel prices above 1940 levels, this item of electric utility expense will doubtless be higher in 1941, unless prices are "frozen" at some point near present levels. This now seems a possibility. Once the steel workers got their wages increased, steel prices were quickly stabilized, and the last group of coal operators are now under increasing pressure to come to terms with their miners. But unless some ceiling for fuel prices is established, electric utility fuel bills will possibly be disproportionately higher.

The possibility of wage increases is not the threat to utility earnings that it is in other fields. Substantially increased production and distribution of gas, electricity, and water would require little, if any, expansion, of workers. Moreover, aside from the printing trades, electric and gas utility workers are the highest paid labor group in the country today. So while a general rise in living costs might necessitate increases in existing wage scales, with the contributory effect on rising operating costs, they should not be serious in the face of expanding sales and operating revenues.

The two remaining classes of electric utility operation and maintenance expense contain a wide range of commodities and services. With "materials and supplies" comprised of every commodity but fuel used in utility operation—oil and ink, nails and rope, gasoline and paper, paint and shovels—and with "miscellaneous items" comprised of such varied intangibles as rent and insurance, telegrams, and legal advice, they cover practically the full range of human endeavor. Their prices tend to fluctuate with the general price level. By reason of their miscellaneous character, no estimate of the extent of price changes is possible, except to predict they will increase in the absence of widespread wage and price freezing.

Depreciation and taxes, the other two elements of electric utility cost, being dictated primarily by governments nowadays, are largely unpredictable. Designed to cover loss in property value not restored by current maintenance, depreciation has lately become a tool in the hands of regulatory authorities to force reforms frequently not countenanced by direct methods. During periods of emergency, some part of depreciation expense might well be deferred without danger to investors or consumers, provided the deficit was later amortized. But even if full depreciation requirements must be met, it is unlikely increasing proportions of expanding revenues will be consumed. Taxes, however, are another matter. The very sinews of war and defense, they will undoubtedly increase over the years. In fact, bills now before Congress propose boosting the Federal corporation income tax from a present 24 per cent to at least 30 per cent during 1941, with even higher rates possible in later years.

There are, fortunately, alleviating influences at work. Some utilities have elastic clauses in their contracts with industrial consumers which afford partial protection against rises in both operating costs and taxes. Again, there is evidence that we are just about scraping bottom in the 2-decade downward spiral of rate reductions. Already, the New York commission has indicated that it will consider meritorious applications for rate increases by utilities showing definite burdens resulting from increasing taxes and other costs. Other state and Federal commissions may be expected to follow suit.

INDEED, a holiday on rate reductions "for the duration" may be required, not so much to bolster utility income (which the tax collector will take care of, anyway), but to discourage increased consumption that would demand additional investment in production facilities which the nation's resources cannot afford at this time.

The Federal power program has itself made a strong point of the fact that lowered domestic utility rates increase domestic consumption almost in direct proportion. A few years ago this would have been in the interest of the "more abundant life." But now, when there is more serious work to be done by every kilowatt hour and materials that go into the making of every kilowatt hour, such a tendency is contrary to the best interests of the national defense.

—F. X. W.

Gas Institute—an Industrial Educational Experiment

A PROGRAM, sponsored by the leading natural and artificial gas companies of the United States, is about to bear fruit in the form of an educational foun-

"PRIZE FOR THE BEST *FILET MIGNON AVEC LES CHAMPIGNONS* GOES TO MESS SERGEANT O'GRADY OF COMPANY B"

dation for graduate instruction leading to the degrees of Master of Science and Doctor of Philosophy. New courses will be offered as a separate unit of the Illinois Institute of Technology.

This Chicago institution was selected as a result of an extensive survey conducted among the leading colleges and universities in the United States. The location of the Illinois Institute of Technology and the composition of its staff and administrative offices were deemed most likely to fit into the requirements of an intensive study of gas technology.

The new "Gas Institute" will involve an expenditure of more than $1,000,000 during the next ten years, exclusive of additions to plant and equipment.

There will also be conducted and encouraged under this graduate program of instruction, fundamental and applied research pointed towards the betterment of the future of the gas industry, according to H. T. Heald, president. President Heald recently returned from New York city where he had attended the final organization meeting of the trustees acting upon the affiliation of the "Gas Institute" with the Illinois Institute of Technology. Completion of working arrangements should start courses for the fall semester. President Heald said:

> Initial financing will provide funds for operating and maintenance expenses in the amount of at least $100,000 per year for a period of ten years. These expenses will include instructional costs and regular maintenance costs.

ACTUAL operation is scheduled to begin in September, 1941, concurrent with the opening of Illinois Institute of Technology for the regular academic years of 1941-42. From five to ten fellowships will be granted students for the first year of operation. The program, however, when in complete operation, contemplates a student body of graduate level of from fifty to sixty students with a well-qualified faculty chosen for its competence in research and graduate instruction.

Plans for the "Gas Institute" include the erection of buildings to house its activities. These buildings will be in addition to the new structures planned by Illinois Institute of Technology under its current expansion program.

While not a part of the $3,000,000 special development program of Illinois Tech, the Institute of Gas Technology project directly supplements it, according to Wilfred Sykes, president of Inland Steel and chairman of the development committee of the institute's board of trustees. Mr. Sykes said:

> The fact that leading gas companies across the country have chosen Illinois Institute of Technology as the site for this important project is, we believe, largely attributable to the plans which our trustees have laid for developing on this campus a technological training center second to none. We are proceeding to launch an early effort to assure funds for the most urgent of our building needs, Metallurgical, Mechanical, Chemical, and Electrical Engineering buildings, a Library and Administration building, and a Humanities building.

At present, according to President Heald, 17 gas companies are members of the organization group. The decision to create the Institute of Gas Technology at Illinois Tech came as a result of two years of investigation on the part of a committee of the gas industry, headed by Frank C. Smith, president of the Houston Natural Gas Company (Texas).

F. H. Lerch, Jr., president of the Gas Companies, Inc., of New York and chairman of the committee on university affiliation of the gas companies, confirmed the announcement of plans to create the new institute. Mr. Lerch also formally announced selection of Illinois Institute of Technology from the group of colleges and universities in the United States under investigation as to capability to handle the project.

IN making announcement of the selection of Illinois Institute of Technology as the sponsor of the new project, Mr. Lerch said:

> Illinois Institute of Technology impressed the gas industries' committee by its willingness and excellent ability to coöperate in this project. The "Gas Institute" will have as its primary objective the training of man power specifically for the gas industry. Trained exclusively on the graduate level, these men will have the benefit of the highly respected graduate school now in existence at the institute.
>
> The scope of the curriculum, the excellence of its faculty, the character of the fundamental research to be undertaken for the degree, will be designed to make available the highest type of scientifically trained personnel and to broaden the scientific knowledge applicable to the solution of the problem of one of the nation's most important industries.
>
> Such an institution as the "Gas Institute" must necessarily have the highest standards. This will necessitate a carefully selected student body and faculty.

Six principal objectives have been laid down to form the basis of operation of the "Gas Institute." First of all, the founders of the new institute expect it to be operated to "train qualified young men, college graduates, for entrance as valuable employees to the gas industries. The other five objectives are: conduct fundamental research; conduct applied research; collect and distribute scientific information pertaining to gas research, development, investigation, and processes; as a central organization to stimulate research throughout the gas industry; and as a central organization to coördinate research in the gas industry."

Upon completion of four years of study, the student under this program would receive the degree of Doctor of Philosophy, awarded by Illinois Institute of Technology.

THE course of study, which requires college graduation for admission,

would include three years of academic training based upon the fundamental sciences and fundamental research. The fundamental science studies include organic chemistry; engineering mathematics; physics; fluid flow and heat transfer; physical chemistry; gas technology; chemistry of polymerization and depolymerization; and catalysis and surface chemistry.

The curriculum also includes the equivalent of one year of academic work designed to give the background of the gas industry, including operation, management, and regulations of public utilities; equipment and materials for the manufacture, storage, and distribution of gas; by-products of the gas industry; management problems of the gas industry; and other related subject matter.

The fourth year of the student's training will basically consist of research of a fundamental nature of interest to the gas industry. In addition, the student shall be expected to have spent at least three summers of work in some phase of the gas industry.

The administration of the "Institute of Gas Technology" will be vested in a board of trustees made up of representatives of the gas industry and trustees of Illinois Tech. At the New York meeting the following officers were elected: For chairman of the board of trustees, Frank C. Smith, president of the Houston Natural Gas Company (Texas); for president of the Gas Institute, H. T. Heald, president of Illinois Institute of Technology.

For members of the executive committee, in addition to the chairman and president, the following: Herman Russell, president, Rochester Gas & Electric Corporation (New York); F. H. Lerch, Jr., president, Gas Companies, Inc., New York; Frank H. Adams, vice president, Surface Combustion Corporation, Toledo, Ohio; Thomas Drever, president, American Steel Foundries, Chicago, and member of the board of trustees of Illinois Tech; and Wilfred Sykes, president of Inland Steel, Chicago, and member of the board of trustees of Illinois Tech.

Notes on Recent Publications

CONSUMERS' APPEALS FROM PUBLIC SERVICE COMMISSION RATE ORDERS. By T. Richard Witmer. 8 *University of Chicago Law Review* 258. February, 1941, 22 pp.

The author, an assistant professor of law at Yale University, concludes on the basis of a substantial examination of case law that state commissions should not have the exclusive jurisdiction to foreclose the rights of utility consumers. He points to the recent overthrow of the "negative order" doctrine in the Supreme Court and warns us that even when resort to courts can be had to review a commission's order, the range of issues open to review is narrow. In other words, only constitutional jurisdictional questions or basic issues of proof can be raised. If these legal tests are satisfied, commission orders become incontestable. He states:

> "Whether the state courts will ignore this as they have ignored the affirmative-negative order doctrine in the past is anyone's guess. Whether they should ignore it —of course one assumes that there will be like treatment of consumer and utility whichever way they go—is another question. Its solution will depend in part on one's notions as to the propriety of an unsupervised and unlimited delegation of power in however small a field. It will depend partly on one's estimate of the value of having some statutory method of judicial review at the instance of a consumer to counterbalance the utility's constitutional method and of being able to force the courts occasionally to look at a commission in a light other than that shed by utility-commission contests. And it will depend partly on one's estimate in a given jurisdiction and at a given time of the faithfulness of a particular commission to its statutory duties. Of such must one's judgment be compounded."

JURISDICTION OF STATE PUBLIC SERVICE COMMISSION TO REGULATE NONPROFIT ELECTRIC MEMBERSHIP CORP. Garkane Power Co., Inc. *v.* State PSC of Utah. (Utah) 9 *George Washington Law Review* 238. December, 1940.

PEOPLE'S UTILITY DISTRICTS IN OREGON. By Betty L. Brown. 20 *Oregon Law Review* 3. December, 1940.

THE WEST VIRGINIA PUBLIC SERVICE COMMISSION. Part III. By A. C. Peairs, Jr. *West Virginia Law Quarterly*. April, 1941.

The March of Events

Columbia Power Authority

CREATION of a Columbia Power Authority to market power from Bonneville and Grand Coulee in Oregon and Washington, composed of a power administrator and a 6-member authority council functioning as a regional agency under the Department of Interior, was sought in an administration bill introduced in the House last month.

The measure was introduced in the House by Representative Knute Hill, Democrat of Washington, at the request of Secretary of Interior Harold L. Ickes. It would give the Secretary of the Interior entire control of the project through authority to appoint a Columbia Power Administrator at $10,000 a year without regard to civil service laws, and two administrators, a chief engineer, and a general counsel under civil service laws at salaries to be determined by him.

The bill also would authorize the Secretary of the Interior to appoint a Columbia Power Authority council consisting of six residents of the Pacific Northwest to serve 3-year terms and to advise the administrator.

Other provisions in Representative Hill's measure would empower the Power Authority to acquire or lease in the name of the United States any electric utility systems operating in the territory and to sell them to public bodies or coöperatives. It provides that the authority may issue notes, bonds, and other obligations running for not more than fifty years, but that the obligations may not exceed $200,000,000 at any one time.

The projected Columbia Power Authority would not be similar to the present Tennessee Valley Authority, Bonneville project officials said.

The bill was expected to create a controversy in Congress. Opposition from Senators Charles L. McNary and Homer T. Bone of Oregon and Washington, who have been preparing a Columbia Authority bill providing for a one-man administrator to be appointed by and responsible to the President, was expected.

OPM Names Electrical Supply Group

FORMATION of an electrical industry advisory committee which will speed coöperation between government and industry on defense program problems was announced by Donald M. Nelson, director of purchases, Office of Production Management. The committee, which will be purely advisory, will function under the direction of Donald G. Clark, chief of the equipment and supplies branch of the purchasing division, and Lewis A. Jones, special advisor on electrical supplies.

Problems which would be considered by the committee, according to Mr. Nelson, include those of the conservation and substitution of materials, simplified practice, revision of specifications, problems of raw materials supply, allocation of production capacity, inventory control, and the like.

TVA Accounting Plan

THE House Military Affairs Committee on June 27th approved a "compromise" bill embracing an amicable settlement of the long-standing controversy between the Tennessee Valley Authority and the General Accounting Office.

Under the terms of the measure (HR 4916) the expenditures of the Federal power agency would be brought squarely under the budget and accounting act for audit and settlement by Comptroller General Lindsay C. Warren.

In return for this concession by TVA Directors David E. Lilienthal and James Pope, the Comptroller General agreed to specific language in the compromise bill upholding the authority of the directors to make final decision on expenditures questioned by the GAO, including claim settlements, subject only to his right to report disputed decisions to Congress.

Power Cut Ordered

THE Federal Power Commission on June 28th declared existence of a power emergency in southeastern United States and called for immediate curtailment of street and ornamental lighting in the 8 states affected. The declaration applied to Virginia, North Carolina, South Carolina, Georgia, Alabama, Tennessee, Mississippi, and Florida. It gave the commission a basis for invoking emergency powers provided by the Federal Power Act. Under these powers the FPC can order an integration of power facilities to alleviate a power shortage.

Simultaneously, Secretary of Interior Harold L. Ickes, who has warned of petroleum and power shortages, predicted a possible soft

coal shortage next fall when defense demands are likely to overburden the railroads.

The FPC "urgently recommended" to all citizens and electric utilities in the 8 states that the use of electricity for all nonessential and nondefense purposes be curtailed, "including the use by and sale to domestic and commercial consumers, industrial consumers to the extent that they are not engaged in production for the defense program, the use of electric energy by municipalities for street and ornamental lighting to the extent consistent with the public safety and the public interest."

The Federal Power Commission followed its broad declaration of a power emergency in the Southeast on July 1st by ordering, on its own motion, a series of interconnections among power companies, municipal plants, and REA coöperatives. The purpose of the interconnections is to bolster power supply for essential southeastern defense industries, including new aluminum plants in North Carolina, Alabama, and Arkansas, jointly recommended by the commission and the Office of Production Management, through strengthening the 17-state power pool initiated by the commission several weeks ago.

In its first exercise of authority under emergency provisions of the Federal Power Act, the commission ordered that interconnections be initiated immediately and carried forward without delay between or among the following:

1. Florida Power & Light Company at Sanford, Florida, and Florida Public Service Company at Benson Springs, Florida.

2. Duke Power Company near Albemarle, North Carolina, and Carolina Aluminum Company at Badin, North Carolina.

3. The New Orleans Public Service, Inc., at New Orleans, Louisiana, and the Mississippi Power Company at Gulfport, Mississippi, via facilities of the Louisiana Power & Light Company.

4. Georgia Power & Light Company near Waycross, Georgia, and the Georgia Power Company, near Alma, Georgia.

5. Florida Power Corporation at Jasper, Florida, and Florida Power & Light Company near Lake City, Florida.

6. Florida Power Corporation, after strengthening transmission facilities between Inglis and Jasper, Florida, and Georgia Power Company at Jasper, Florida, and Tifton, Georgia, via facilities of the Georgia Power & Light Company.

7. Florida Power Corporation near Quincy, Florida, and the Alabama Power Company near Pinckard, Alabama, via an interconnection to be built by Alabama Electric Coöperative.

Concurrently, the commission recommended that the Tennessee Valley Authority and the Cincinnati Gas & Electric Company study and report to the commission, within two weeks, their conclusions with regard to the construction of an interconnecting transmission line.

REA Approves Coöperative Distribution

THE Rural Electrification Administration recently approved a coöperative generation and transmission system for 10 REA distribution coöperatives in Louisiana and Arkansas and allotted $520,000 to permit construction to start. The system will cost eventually in the neighborhood of $2,864,000.

The new system is known as the Arkansas-Louisiana Electric Coöperative, and its headquarters are now at Homer, Louisiana. Its plans call for a 10,000-kilowatt steam-generating plant using natural gas, and 544 miles of transmission lines. Power from the new facilities will be used to serve a proposed munitions plant in the area, the REA stated.

EHFA Tightens Terms

THE first step in what may develop into a broad program to curb instalment buying was taken recently by the administration. Federal Loan Administrator Jesse Jones announced that, effective July 1st, instalment terms for purchase of electrical and gas appliances through the Electric Home and Farm Authority would be tightened up.

Since early this year, the Federal Reserve Board has been studying the need for legislation giving it powers to discourage instalment buying by imposition of credit controls. Thus far, however, no action has been taken on the board's findings.

Under the new EHFA instalment terms down payment requirements will be increased from 5 per cent and 10 per cent to 10 per cent and 15 per cent of the retail price of appliances and maximum maturities will be lowered to periods ranging from twelve to thirty months for individual transactions and eighteen to thirty-six months for combination sales.

It was pointed out that this action was in line with the authority's policy of restricting terms during "periods of increasing economic activity" and of liberalizing them during "periods of economic stress." The authority said it hoped that this action "will contribute to the success of the national defense program by causing the diversion of materials and labor to defense production."

Resigns Power Post

THE Office of Production Management recently announced the resignation of C. W. Kellogg as power consultant. The resignation of Mr. Kellogg resulted in disclosure of an official OPM policy, adopted last month, that paid officials of trade associations may not be employees of the defense organization.

Mr. Kellogg is president of the Edison Electric Institute and this was the reason ascribed for his resignation. The decision to ban trade association executives raised the question of

whether a few other OPM officials would resign.

J. A. Krug, TVA chief power engineer for the last two years, has been appointed power adviser of the materials division of the Office of Production Management. Krug's appointment is expected to give him considerably more authority on power matters, it was recently reported, and the influence of his judgment is expected to be felt, particularly in the Tennessee area.

St. Lawrence Project Hearings

SECRETARY of Commerce Jesse Jones and Leland Olds, chairman of the Federal Power Commission, last month endorsed the $285,000,000 St. Lawrence seaway and power project as an essential aid to the nation's huge defense program.

Jones told the House Rivers and Harbors Committee the seaway could be built "without costing the taxpayers a dime" and would make available new sources of shipbuilding and power to bolster the national defense. He said the seaway could be financed by issuing revenue bonds to be paid off with receipts from tolls and the sale of power.

Olds warned that the country faced a shortage of power for defense needs and declared that the St. Lawrence project was "essential to meet the maximum power needs of the defense program."

Chancey J. Hamlin, chairman of the Niagara Frontier Planning Board of Buffalo, told the committee that the St. Lawrence seaway would cost the United States more than $500,000,000 instead of the $200,000,000 estimated by Army Engineers. He said the development, including power works, would be "so generally ruinous to American commerce and industry, labor and capital that its nation-wide deleterious effects would far exceed whatever claimed advantages might redound to certain special interests."

I. C. Sabin of the Lake Carriers Association of Cleveland testified that "informed labor" was opposed to the project.

Mayor Thomas L. Holling of Buffalo, testifying on the bill, said it would affect the wage earnings of at least 15,000 marine workers in his city. Mr. Holling held that the project also would "seriously affect" shipments by rail.

Speaker Sam Rayburn at a recent press conference said he understood the committee was evenly divided on the project, but that he did not know the general sentiment of Congress.

Representative Bender, Republican of Ohio, at the outset of another day of hearing opponents of the seaway, remarked that Federal employees were neglecting their jobs to attend the sessions. "This is something that ought to be called to the attention of the taxpayers," Mr. Bender said before other members objected that Federal workers had a right to be present.

Engineers Favor Norfork Dam

ARMY Engineers recommended to Congress on June 25th expenditure of an additional $13,500,000 to convert the Norfork dam flood-control project on the Norfork river in Baxter county, Arkansas, into a dual purpose, power-flood-control development.

The dam would have 1,983,000 acre-feet capacity and an initial power installation of 60,000 kilowatts, with penstocks for an additional 60,000 kilowatts. Total prospective power was estimated at 148,000,000 kilowatt hours annually. Marketable power was estimated at 138,000,000 kilowatt hours per year, which the Federal Power Commission said would have a value of $894,000. The Engineers urged that the project be undertaken immediately.

The Norfork dam is a part of the White river basin flood-control program for which Congress previously authorized expenditure of $25,000,000.

OPM Approves TVA Project

WILLIAM S. Knudsen and Sidney Hillman, directors of the Office of Production Management, recently approved a measure empowering the Tennessee Valley Authority to develop hydroelectric power projects on the Cumberland river in Tennessee.

Senator Norris, Independent of Nebraska, chairman of an agriculture subcommittee considering the legislation, read into the hearing record a letter in which the OPM directors declared:

"The existing shortages and the threatened additional shortages of electric power in the Southeast, and the vital part which this area plays in the production of aluminum and other defense materials, make it important to plan for the full utilization of the power resources of this region both for the immediate needs and also in the longer-range view of national defense."

Introduced by Senator Norris, the bill would authorize the agency to construct a series of hydroelectric dams in the Cumberland basin. It would give the TVA "the same jurisdiction and power over the Cumberland river, its tributaries, and the Cumberland river basin as over the Tennessee river, its tributaries, and the Tennessee river basin . . ."

Utility Maintenance Preferred

PRIORITY status for repair and maintenance materials and equipment required for uninterrupted operation of a wide range of industrial processes and public services was assured on July 1st when the civilian supply allocation division of the Office of Price Administration and Civilian Supply promulgated an allocation program covering such items.

Action was necessitated by growing demands on raw materials.

Arkansas

Rate Reductions Suspended

COMMISSIONER Joe W. Kimzey, sitting alone in the absence of other members of the state utilities commission, last month recommended that the commission suspend ordinances passed by 10 northeast Arkansas cities and towns reducing natural gas rates pending a commission study of the present schedules.

It was the first step in a move to adjust wholesale rates charged by the Mississippi River Fuel Corporation to the Arkansas Power & Light Company. The latter company serves the cities and towns involved.

Mr. Kimzey directed the AP&L to post a bond covering amounts of the proposed reductions, adding that if the commission determines rates are too high a reduction will be ordered and customers would receive rebates as of July 1st. He said the proposed investigation would be accelerated.

Towns and cities affected are Jonesboro, Searcy, Tuckerman, Judsonia, Batesville, Hoxie, Walnut Ridge, Bald Knob, Alicia, and Newport. The AP&L estimated proposed reductions would aggregate $100,000 a year. Willis H. Holmes, power company attorney, said the Arkansas Power & Light and Mississippi River Fuel Corporation were "technically" but not "actually" affiliated.

Connecticut

Rural Electrification Pushed

ELECTRIFICATION of rural areas, as provided in legislation adopted by the 1941 state general assembly, will be pushed as rapidly as possible, it was indicated recently as the state public utilities commission set July 1st on a commission order providing for the extension of electric service in rural communities where there is an average of two subscribers per mile and where subscribers agree to guarantee a revenue of $13.50 per mile of extension per month.

The hearing was to be conducted by the new public utilities commission.

Rate Rehearing Asked

MAYOR John W. Murphy of New Haven last month said he had petitioned Governor Robert A. Hurley to direct the state public utilities commission to hold a public rehearing of the rate increases granted the New Haven Water Company in 1939.

A formal petition presented to the chief executive said the commission's action in the rate case was "illegal" and "arbitrary" and went counter to his duty "to protect the interest of the public as well as that of the utilities."

The rate increases, said the petition, cost the water company subscribers about $125,000 a year.

Mayor Murphy said the request for a new hearing resulted from the changes in the personnel of the utilities commission whereby Joseph P. O'Connell of Bristol and Clyde O. Fisher of Middletown succeeded Edwy L. Taylor of New Haven and Alvan Waldo Hyde of Hartford on July 1st.

Florida

Company Declares Dividend

THE Florida Power & Light Company last month declared a dividend totaling $5,671,000 to approximately 5,000 preferred stockholders, an action made possible by the sale of the Miami Water Company to the city and the Miami Beach Railway Company to W. D. Pawley. Miami took over the water distribution system on April 4th upon payment of $4,500,000, and a month later Pawley and his associates bought the railway company.

Three bills became law on June 16th in Tallahassee which validated the purchase, confirmed the city's contract with the power company, and created a Miami water and sewer department.

McGregor Smith, Florida Power & Light president, issued a statement in which he said the dividend amounted to $36.32 a share on the company's $7 preferred stock, representing the regular quarterly dividend of $175 plus all arrearages.

Governor Spessard L. Holland permitted the three bills affecting the water purchase plan to become law without his signature. A 5-man city water board was named in the law creating the department.

Illinois

Utility Tax Extended

THE state senate last month passed a bill extending the 3 per cent tax on gross receipts of public utilities for another two years. The measure, a part of the state's revenue program, was sent to Governor Green.

Under the old law the tax would have reverted to 2 per cent on July 1st.

Acquisition Authorized

THE Peoples Gas Light & Coke Company was recently authorized by the state commerce commission to acquire all the gas properties of the Public Service Company of Northern Illinois lying within the corporate limits of the city of Chicago for $3,700,000.

Heretofore Peoples Gas had been leasing such facilities from Public Service at an annual rental of approximately $368,000. The properties include 5 production plants, 14 distributing stations, 2 leased stations, and 2 purification plants, as well as some transmission mains.

State Commission Members

GOVERNOR Green completed the new membership of the state commerce commission last month by appointing the following commissioners: William Parillo, Chicago; Frank, Peska, Chicago; Val J. Washington, Chicago; and Edward Rosenstone, Cambridge.

Frank M. Kalteux, Chicago, was appointed secretary of the commission. He succeeded Joseph Knight, secretary of the Democratic state central committee.

John D. Biggs already had been named chairman of the Illinois Commerce Commission.

The Democratic commissioners to be replaced were James D. Marnane, Chicago; Charles E. Byrne, River Forest; William Hart, Benton; and Robert M. Harper, East Moline.

Street Car Fare Increase

FEDERAL Judge Michael L. Igoe instructed the Chicago Surface Lines' management board last month to apply immediately to the state commerce commission for permission to increase the present 7-cent street car fare to 8 cents.

The court's order followed approval by Judge Igoe of a new labor contract granting pay increases totaling $2,400,000 a year to the 13,000 employees of the surface lines. The new contract provided for a wage boost of 5 cents an hour for trainmen, an increase from six to ten days in paid vacations, and pensions of $40 a month for men over sixty-five with twenty years' service.

Following the submission of the labor contract to the court, Henry Tenney, attorney for the Surface Lines' largest bondholders' committee, told Judge Igoe that property of investors was being confiscated at the present rate of fare and that a higher fare should be sought at once. Judge Igoe agreed that Tenney's suggestion should be carried out. He said there should be no hesitancy in asking for a higher fare. "The investors are entitled to a fair return, the men to a fair wage, and the public to improved service. The management, bondholders, and employees should join in seeking the increased rates. This court has never entertained any other opinion."

Indiana

Reorganization Plan Voided

AS a result of a far-reaching decision by the state supreme court on June 26th, the status of the Indiana state government will return to that in effect before extensive reorganization laws were passed by the McNutt régime in 1933.

Governor Henry F. Schricker, who was the only Democrat elected to a major state office in 1940, disavowed any intention of becoming a political dictator as a result of the ruling in his favor and accused the Republican majority of undertaking a "Hitler dictatorship."

The supreme court decision wrecked the government reorganization program enacted by Republicans in the 1941 legislature. With four Democratic judges concurring and the lone Republican dissenting, the court nullified as contrary to the state constitution three laws the legislature had enacted to force Governor Schricker to share appointive power with four Republican state officials.

The ruling was the outgrowth of a fight over control of 12,000 state jobs, including appointments to the state public service commission. The reorganization program put into effect by the Republicans was a substitute for the drastic reorganization act put through by Paul V. McNutt, now Federal Security Administrator, when he was governor in 1933. McNutt's law vested in the governor the power to appoint most employees of all state departments.

In repealing this act, the Republican assembly put the departments under boards of three officials, with the governor in the minority.

Kentucky

Ask Rule Lowered

Two of Kentucky's largest gas utilities recently petitioned the state public service commission to ease its rule of September, 1940, requiring free extension of at least 100 feet of pipe line to a prospective customer living beyond a main line.

The Louisville Gas & Electric Company suggested that the rule be revised to allow 75 feet of free extension, plus 125 additional feet of free extension to consumers installing gas furnaces.

The Union Light, Heat & Power Company, Covington, suggested that the compulsory free extension be dropped from 100 to 75 feet.

Commissioner Thomas B. McGregor took the pleas under advisement after a 2-hour hearing.

Prior to September, 1940, the commission required free extension of 50 feet, but, as a matter of fact, most of the gas utilities allowed more liberal extensions. The Covington company, for example, allowed 75 feet, and the Louisville utility allowed 67 feet for range and water heater installations, with 133 additional feet for gas furnace installations.

L. G. Dahl, rate analyst, who presented the Louisville Company's case, charged that the change to 100 free feet had been favored by the smaller gas companies, which ordinarily lay 2-inch pipe at a cost of from 30 to 55 cents a foot. Four-inch pipe is the minimum in his system, Dahl said, and costs $1 a foot to install.

C. G. Eichelberger, vice president of the Covington utility, said his installation costs $1.95 a foot, due to a peculiar clay subsoil in his territory which requires the use of cast-iron pipe, instead of cheaper steel pipe.

In the Louisville area, Dahl said, the ratio of central gas heating to the total number of new consumers added by line extensions is one out of five. More and more cottage-type homes, he said, are being equipped with small gas furnaces fitted into the floor, instead of larger furnaces in the basement.

Power Line Authorized

Authorization last month of a new $1,000,000 power line between Hazard and Pineville put under way the forging of another link in a vast chain of power systems in more than a dozen states to help supply electricity for defense purposes, particularly in the drought-threatened TVA area.

The new line, which the state public service commission authorized the Kentucky and West Virginia Power Company to construct, will tie in power facilities of that utility with TVA lines which are now being erected between the Kentucky Utilities Company plant near Pineville and Norris dam power plant at Norris, Tennessee.

The power line will run directly across Perry, Leslie, Clay, Knox, and Bell counties.

Meanwhile, TVA engineers have arrived in Pineville to start construction of the Pineville-Norris line, which also will cost about $1,000,000 and which will extend some fifty-five to sixty miles.

Michigan

Rate Cut Approved

The state public service commission recently approved the request of the Detroit Edison Company for permission to cut its rates $700,000 a year, and will hear any petition Detroit officials want to file for a further rate cut, John J. O'Hara, commission chairman, said.

F. M. Hally, Detroit public lighting commission secretary, filed a report with Mayor Jeffries last month indicating that the $700,000 cut was small compared with the company's $7,000,000 increase in profits in 1940, and still left Detroit residential electric rates well above rates in such cities as Cleveland and Wyandotte. After reading the report Mayor Jeffries commented that the $700,000 cut "should have been three times as large."

O'Hara said he understood Detroit officials "want to accept this cut as a beginning, even though they may not be convinced it is large enough. This commission for several months has been examining the gas and telephone rates charged in the Detroit area by the Michigan Consolidated Gas Company and the Michigan Bell Telephone Company. We have made no special survey of the Detroit Edison rates. If the city has facts purporting to show the company's rates are too high, we would be more than glad to go over the data with them.

"If the city is prepared to ask for a further reduction in rates, it can file a petition asking us to go into the matter and we will do so."

Gas Rate Hearing Delayed

The state public service commission again delayed recently, until August 15th, the effective date for higher rates for customers of the Michigan Consolidated Gas Company. The commission also delayed until July 29th the hearing of Detroit's objections to their months-old order granting the increase in gas-

heating rates. The issue became so hot that the commission suspended the order affecting house-heating plants.

The hearing, scheduled for June 26th, was postponed because the Federal Power Commission on July 15th is scheduled to hear a petition by Detroit attorneys that the wholesale rate charged by the pipe-line company that delivers Texas natural gas at the Detroit city limits be reduced.

"If the Federal commission reduces the wholesale rates, that will change the whole domestic rate picture," John J. O'Hara, public service commission chairman, said.

New Jersey

Tax Distribution Upheld

Two 1940 laws validating a revised formula for distribution of $13,000,000 annually in gross receipts and franchise taxes paid for 1938 and 1939 by public utility companies were upheld on June 26th by the New Jersey Court of Errors and Appeals.

About $7,867,810 in taxes collected for the two years remained to be distributed to municipalities.

The decision by the state's highest law court reversed a ruling by the state supreme court which favored Newark, Jersey City, and Hoboken. The three large municipalities stood to lose money under the revised formula. The statutes were defended by 118 smaller communities which gained under the new distribution method established by State Tax Commissioner H. J. Thayer Martin.

Commission President Elected

Frank J. Reardon of Jersey City was elected president of the 3-member state public utilities commission at an organization meeting in Newark on June 26th, succeeding Harry Bacharach of Atlantic City, who was recently replaced by Joseph E. Conlon of South Orange.

The election of Mr. Reardon swung control of the board to the Democrats for the first time since 1934. Mr. Reardon was assistant corporation counsel of Jersey City before he was appointed to the state board of commissioners in 1934.

New York

Tax Cut for Utility Users

Tax reductions amounting to $3,300,000 for users of telephone, gas, and electric service were approved by the New York city council and the board of estimate on June 24th as both bodies adopted an emergency relief tax program for next year designed to raise a total of $71,575,000.

The Democratic-controlled council voted the tax cut in the face of opposition by Mayor LaGuardia and Comptroller Joseph D. McGoldrick, who maintained that the tax program should be reënacted without change. Because of the mayor's opposition, Councilman Joseph E. Kinsley, chairman of the council finance committee, reported that the council would be unable to reduce the city sales tax from 2 to 1 per cent. The Citizens Budget Commission, the Merchants Association, and a number of other organizations had asked for the sales tax cut in view of the present surplus in relief tax funds.

The $3,300,000 reduction voted by the council will benefit householders who have been paying a city relief tax of 3 per cent on their bills for telephone, gas, and electric service. The new rate is 2 per cent and the expected revenue from this source during the next fiscal year is $6,700,000, against more than $10,000,000 raised in the fiscal year which just expired.

Comptroller McGoldrick's figures showed that relief taxes on electricity in the current fiscal year raised $4,980,156, taxes on gas consumption produced $918,281, users of steam paid $243,171, telephone users paid $3,151,009, and taxes on telegraph and cable service amounted to $76,683. Relief taxes on other utility services brought the total above $10,000,000.

To Get REA Loan

The New York State Electric & Gas Corporation, subsidiary of Associated Gas & Electric Company, was recently authorized by the state public service commission to sell the Rural Electrification Administration a 20-year serial note for $500,000 to finance construction of 453½ miles of additional lines to serve farm customers.

The note would be secured by $600,000 of the company's 3¾ per cent first mortgage bonds, due 1964, is to be paid in 39 equal semiannual instalments, and interest on the unpaid balances will be at the rate of 2.46 per cent a year.

This is the sixth REA loan the commission has authorized the New York State Electric to make for rural extensions, the five previous

borrowings totaling $1,745,000. The company spent $6,637,437 up to the end of last year for 4,532 rural miles completed and 145 miles under construction. For these expenditures, $5,041,420 of securities have been issued.

Credit Terms Tightened

THE Consolidated Edison Company is cooperating with the government to restrict instalment sales during the emergency by stiffening terms for financing purchases of electric and gas appliances.

The company was said to be shortening the maximum period for time payments on gas and electric ranges and refrigerators to two years from three and on sales of kitchen and laundry equipment to twelve months from twenty-four. Larger initial down payments would also be required when the revised terms became effective on June 20th.

E. F. Jeffee, vice president of the utility, stated that it "is better for retailers and manufacturers to take the initiative in adjusting themselves to the basic changes in merchandising methods which are likely to take place as a result of present conditions."

Transit Parleys Start

NEGOTIATIONS between the Transport Workers Union and the New York city board of transportation over hours, wages, and working conditions on the city's unified transit lines began on June 30th in an atmosphere described by both sides as "amicable."

The meeting was described by the participants as being in full accord with the spirit of the agreement reached on June 28th between Mayor LaGuardia and Philip Murray, president of the CIO, resulting in abandonment of the union's plan to put into effect on July 1st a strike on the unified transit lines. Spokesmen for the union said, after the conference with the board of transportation, that the union membership would be asked, probably at section meetings, to rescind the strike vote taken last month at four divisional meetings.

Although the danger of a strike had been dispelled, the board of transportation did not immediately announce abandonment of all plans for handling a walkout.

The city, it was reported, has conceded the right of employees to be represented by a union of their own choosing.

Ohio

Court Upholds "Gifts"

THE Cleveland utilities department must continue to furnish water free of charge to public and parochial schools, hospitals, libraries, charitable institutions, and cemeteries, the state supreme court ruled last month.

The court upheld the constitutionality of a city council ordinance enacted last year to provide specifically that the educational and charitable institutions were entitled to free water.

The recently decided suit was instituted by Mayor Edward Blythin when he was chief assistant law director. He contended that, because of the expense of drawing water from the lake, purifying, and distributing it, filtered water at the tap was actually property and should be paid for at a reasonable rate by everybody.

Had the court's decision gone against the institutions involved, including 288 public and parochial schools and 13 nonprofit hospitals, their aggregate water bill for a year would total around $190,000, with the possibility that they might have to pay back bills for water already received.

Pennsylvania

Rate Cut Ordered

THE state public utility commission on June 17th ordered the Philadelphia Electric Company to reduce its rates to consumers by $4,000,000 annually, effective September 1st, by which time a new schedule of tariffs is to be filed. Meanwhile, the actual reductions for various classes of consumers would not be known, it was said.

The commission pointed out that although it had terminated the rate case in accepting the company's offer to reduce its rates, it will continue its study of the company's financial setup and would study the reasonableness of the new rates. The commission has the right to institute new formal rate proceedings against the company at any time it may consider such action necessary, the commission's statement added. The order terminated a rate study which the commission instituted on its own initiative last November when it and the company had failed to reach an agreement.

Pending study of the commission's order, officials of the company said no detailed breakdown of the savings which will accrue to individual consumers could be made public. Horace P. Liversidge, president of the Philadelphia Electric Company, said the reductions would scale down the cost of electricity in the Philadelphia area to one of the lowest schedules in the country.

Rate Increase Delayed

THE state public utility commission has suspended for six months from July 2nd the effective date of a supplemental tariff filed by the Manufacturers Light & Heat Company, Pittsburgh, it was announced recently. The suspended tariff would have increased natural gas rates to domestic, commercial, hospital, and church customers. The utility serves Allegheny, Beaver, Lawrence, Butler, Greene, Mercer, and Washington counties.

Tennessee

Sign TVA Pact

FOUR years of negotiation between the city of Lebanon and the Tennessee Valley Authority resulted last month in the decision of the Lebanon mayor and board of aldermen to sign a 20-year contract for the purchase of electricity.

Action by the board was not taken until every possibility of securing a more favorable or shorter-term contract had been exhausted, and no alternative seemed practicable. The new contract will not become effective until January 1, 1942. Since August 15, 1939, the city had purchased power from TVA under the terms of a contract with the Tennessee Electric Power Company.

Under terms of the TVA contract the city of Lebanon will continue to own and operate the power distribution system, Commissioner J. S. McClain said. The light plant will be operated as a separate unit, the city being permitted to earn about $20,000 annually for the general fund on the light plant, less the cost of lights and power for streets, pumping, and other civic uses.

The resultant reduction in revenue for the city will probably amount to $35,000, necessitating a possible tax rate increase.

Industrial consumers will be the biggest savers under the TVA system, saving as much as 20 per cent, it was said.

Seek Tax Payment

CHATTANOOGA officials charged last month that the state had refused to comply with the spirit of a congressional act in passing along to municipalities TVA tax replacement payments made by the Federal agency.

Congress authorized the TVA to make tax replacements to the states, counties, and cities which lost taxable property through the public power operation. Mayor Ed Bass said the TVA payment was made to the state which had refused to pass the money to the cities for lack of authority under existing legislation.

City Treasurer Alvin Shipp said Chattanooga was due $18,389 for the 1940 tax year. Nashville was reported as due $5,684, Knoxville $4,245, and Memphis, $5,269.

Mayor Bass said he would appeal to Governor Cooper and, failing there, would take legal action.

Finance and Taxation Commissioner George McCanless said the state could not disburse part of the TVA funds to municipalities "until statutory provisions are made."

Wisconsin

Commission Hears Protests

REPRESENTATIVES of organized labor appeared before the state public service commission last month to oppose the introduction of natural gas into Wisconsin. Resolutions adopted at conventions of the State Federated Trades Council (AFL) and the State Industrial Council (CIO) were introduced as evidence. Both were against the piping of natural gas into Wisconsin.

An objection of representatives of the Independent Natural Gas Company to introduction of the AFL resolution was overruled by Chairman Reuben Peterson, who commented that the commission would "receive the exhibit as action of the council but not the 200,000 individual members."

Petitions objecting to introduction of natural gas were rejected as evidence by the commission, which held they could be filed only as "correspondence."

Harold Stevens, Cincinnati, engineer and fuel technologist of Appalachian Coals, Inc., declared customers in other states have been caused inconveniences and suffering by frequent interruptions in gas service from distant supply sources.

Rebuttal by pipe-line companies to economic testimony presented by natural gas objectors was expected to open early this month in the public service commission's hearing on three applications for Wisconsin permits.

Three "expert witnesses" for objecting railroad and coal interests were cross-examined on June 30th.

Graham E. Getty, Washington, statistician for the bureau of railway economics, Association of American Railways, declined to admit, under questioning, that Wisconsin industries might increase their output and freight shipments sufficiently to offset the loss in coal tonnage if they had the advantage of cheaper fuel.

The Latest Utility Rulings

Gas Rates for Low-rent Housing and Slum Clearance Projects

A CONTRACT for gas service to two low-rent housing and slum clearance projects constructed in Jackson, Tennessee, under authority of the State Housing Authorities Law, with financial assistance of the United States Housing Authority, was approved by the Tennessee commission on petition by the Jackson Housing Authority. The commission decided that the facts, conditions, and circumstances adduced in support of the petition not only justified approval of the contract, but also warranted the special classification for rate purposes of low-rent housing and slum clearance projects accepting utility service under the same or similar circumstances.

The contract provided for service to the authority through a single master meter installed in each project. The authority would construct and operate its own distribution system. Tenants would receive a reasonable amount of gas for cooking, space heating, water heating, and incidental uses and would pay for such service as a part of their rent. The utility would deal only with the authority, which would be responsible for payment for all gas consumed by each project.

Tenants of the project would be drawn from substandard housing areas where poverty has made the enjoyment of "decent and modern living conditions virtually impossible." A schedule incorporating the large industrial rate of the utility was determined to be proper for application to such projects.

The contract further provided that the authority might install individual meters in each tenant's premises to record consumption of service. This was for the sole purpose of checking wasteful and extravagant usage of gas by the tenants. The commission, after considering the "checkmetering" plan and the end in view, was of the opinion that no violation of the rule of the utility prohibiting resale of service was involved. *Re Jackson Housing Authority and West Tennessee Gas Co. (Docket No. 2494).*

Street-lighting Contract Not Terminated By Negotiations

IN New York state the commission assumes jurisdiction over street-lighting rates where there is no existing contract, but it cannot under the law assume jurisdiction if there is an existing contract for the rendering of municipal service.

The New York commission dismissed a complaint by a village against street-lighting rates pursuant to this method of regulation where notice of termination of the contract had not been given, although there were negotiations for a new contract.

The street-lighting contract ran from November 15, 1935, through November 14, 1940, and thereafter from year to year unless and until terminated by one year's prior notice. Admittedly there had been no written notice of termination, but the village took the position that the company and the village, in negotiations for a new contract, had mutually agreed to terminate the old contract.

The mayor of the village testified that the local manager of the company had stated that the contract would expire on November 15, 1940. The local manager denied this, but the commission said that in any event the local manager was not an officer of the company and there was no showing that he was such a representative as could be assumed to have authority to act for the company in declaring the contract terminated.

Discussion of a new agreement by parties to a contract, said the commission, does not terminate the existing contract unless by statements or acts there appears to be a mutual agreement to cancel. Commissioner Brewster, speaking for the commission, said further:

> It is the contention of the village that during the discussion as to a new contract the company did not inform the village that it considered the old contract still in effect or the necessity to serve written notice. This, however, would not constitute a mutual agreeement or understanding that the contract was to terminate at the end of the 5-year period or a waiver of the written notice provided for in the contract.

Board of Trustees of Baldwinsville v. Central New York Power Corp. (Case No. 10411).

British Court OK's Private Utility

A JUDGMENT given recently in the British High Court has been received with satisfaction and relief by everyone concerned with electric supply and by those who believe in private enterprise. The action was one brought by the South Wales Electric Supply Company against the Electricity Commissioners. The Electricity Commissioners are a body established by the Electricity Supply Act of 1919. They are the authority from which the statutory companies engaged in electricity supply have to obtain orders from time to time to enable them to increase their share and loan capital as the extension of their business demands.

About a year ago the South Wales Electric Power Company applied to the commissioners in the ordinary course for authority to raise additional share capital not to exceed £1,000,000 and to increase its borrowing powers by a similar amount. The commissioners were quite satisfied as to the purposes for which the additional capital was required. But they sought to make their consent conditional upon the company giving an undertaking not to make any issue of share capital except on terms approved by the commissioners. The company refused to give this undertaking and proceeded to test the right of the commissioners to ask it by asking the court to make an order prohibiting them, the commissioners, from exacting any such condition.

On May 21st, a Divisional Court of the King's Bench, the Lord Chief Justice (Viscount Caldecote), Mr. Justice Humphreys, and Mr. Justice Singleton, found for the company unanimously and with emphasis. All three judges saw fit to state the reasons for the court's decision in no uncertain terms. "If Parliament," said the Lord Chief Justice, "had ever intended to give the Electricity Commissioners the virtual control of the finance of these companies (*i.e.,* the statutory companies engaged in electricity supply) it would have been done in explicit terms which would have left the parties in no doubt as to the powers of the commissioners." The purpose for which the commissioners were really established was the supervision of the technical operations of the supply of electricity.

Mr. Justice Humphreys was of the same opinion. The commissioners were acting without any authorization at all in demanding an undertaking from the company as the price of their consent; they were bound to act within the limits of the Act of 1919 and could not go outside the powers given to them. In this particular case, it seemed to him, they were seeking to do so. Mr. Justice Sin-

gleton pointed out that the commissioners were seeking to take what would be complete power to settle terms and conditions of new issues of capital. That was something within the scope of the directors and within the scope of the directors alone.

The court's decision settles a controversy that has been going on in the British electrical supply industry for some time. If the pretensions of the Electricity Commissioners to exercise these powers had been upheld by the courts they would have been put in effective control of all issues of capital on the private side of electricity supply in Great Britain. In practice, that may seem a somewhat academic matter when, as everybody knows, the Treasury under its emergency powers has control of all new issues of capital. But this is to ignore the fundamental point of principle involved. Over a number of years Parliament has seen fit for the common weal to modify and circumscribe the liberties of private enterprise. This is a prerogative of the democratic way of life. No possible objection can be taken to it.

Not so, however, the process whereby the powers conferred by Parliament may be extended in execution by those who exercise them beyond the extended scope.

It may or may not be desirable that the Electricity Commissioners should have power to settle the terms and conditions of new issues of capital; though it is probable that a majority of the members of Parliament would consider it most undesirable. But in any case, that is something for Parliament and Parliament alone to decide. With this aspect the court was naturally not concerned, and the learned judges expressed no opinion about it. But what they were clear about was that in seeking to impose an undertaking of this sort the Electricity Commissioners were doing something which they were not entitled by law to do. *Report of Philip F. Dyer, Correspondent, London, England, July, 1941.*

Distributing Company Must Prove Costs of Affiliate Supplying Gas

FAILURE of the Home Gas Company to adduce evidence as to the value of property used in connection with services rendered to it by affiliates, the operating cost to such affiliates, and the rate necessary to provide a reasonable return to them, was held by the Federal Power Commission to be a sufficient reason for disapproving an increased distribution rate based on higher prices paid for wholesale supply. The commission held that the company had not met the burden of proof imposed upon it by the Natural Gas Act.

Prior to the winter of 1939 the gas company had been able to obtain gas from fields in and around New York state at a cost of approximately 20 cents per thousand cubic feet, but the winter of 1939 demonstrated that the gas supply of these fields was near depletion. Consequently the company entered into arrangements with the affiliated United Fuel Gas Company for the purchase of gas in West Virginia and with other affiliates for transportation of the gas. The purchase price was fixed at 30 cents per thousand cubic feet and the transportation cost at 10.65 cents, plus an allowance for line loss. The company claimed that an increase in rates was necessary and appropriate, and proposed new and increased rate schedules were filed with the commission. The company, in support of its contracts with the affiliates, adverted to the facts that the contracts and schedules had been filed with the commission, that the rate charged for gas sold by United was the same as that charged another affiliate, and that the rate charged for transportation was the average cost of gas transported by certain of the system's affiliates known as the "Pittsburgh group."

The principle of the decision in Western Distributing Co. *v.* Public Service Commission, 285 US 119, PUR 1932B, 236, was said to be conclusive. In that case it was held that a subsidiary distributing gas utility, before being allowed an increase in rates, might properly be required to offer satisfactory evidence with respect to all costs which enter into ascertainment of a reasonable rate, including the reasonableness of rates paid to an affiliated wholesale supply company under a contract which was entered into in the absence of an arm's-length bargain between the two corporate entities involved. A contention that rates of affiliates were justified because they were on file with the commission was summarily dismissed. It was said that the acceptance of a schedule for filing does not mean that the commission approves it and does not, for the purposes of this kind of proceeding, establish its justness, reasonableness, or propriety. *Re Home Gas Co. (Docket Nos. G-183, G-190, G-192, Opinion No. 62).*

Municipal Plant Must Contract for Service Under Schedule Rates

THE Wisconsin commission last September directed an electric company to furnish electric service to the village of Whitehall as a public electric utility at the rates prescribed in the company's filed schedule. The company advised the village that a 10-year contract with a 5-year cancellation privilege would be tendered, but the village refused to sign the contract.

The company contended that the contract was an integral part of the rate schedule under which service was ordered. The village asked for interpretation of the commission's order to determine whether it was necessary to sign the contract. This schedule had resulted from an order in which it was decided that the term of a contract for resale service was a vital and essential part of the rate. The commission held that the village was entitled to the rate set out in the schedule only if the village entered into a contract as provided by that schedule. *Re Northern States Power Co. (2-U-1633).*

Exchange of Securities by Registered Holding Company Disapproved

AN application by the Standard Power and Light Corporation for approval of an exchange by it of notes and debentures of Standard Gas and Electric Company for shares of common stock of San Diego Gas & Electric Company was disapproved by the Securities and Exchange Commission. Standard Gas is a subsidiary of Standard Power, and as a step in the consummation of a program under § 11 (e) of the Holding Company Act it had been authorized to make such exchanges of notes or debentures for stock in its subsidiary.

Proceedings have been instituted against Standard Power under § 11 (b) (2) of the Holding Company Act, in which proceedings there is being considered the question whether it is necessary to discontinue the existence of the company, and, if so, what steps are necessary to bring that about. The record, said the commission, indicated that Standard Power and its large common stockholders acknowledged the desirability of winding up the affairs of the corporation. The commission continued:

> Under these circumstances, we are asked to approve an exchange of Standard Gas notes and debentures owned by Standard Power, for shares of common stock of San Diego Gas & Electric Company. The appli-

cation was filed under §§ 9 (a) (1) and 10 of the act which provide, among other things, that the commission shall not approve an acquisition of securities by a registered holding company which is detrimental to the carrying out of the provisions of § 11 (§10 (c) (1)); and that such an acquisition shall not be approved unless the commission finds that it will serve the public interest by tending towards the economical and efficient development of an integrated public utility system (§ 10 (c) (2)). We plainly cannot avoid a rejection of the application under § 10 (c) of the act. The carrying out of the provisions of § 11 requires completion of the process already instituted of a disposal by the Standard Power-Standard Gas system of its interest in San Diego Gas & Electric Company. The application before us, which, if approved, would permit the retention in the system of 8,700 shares of common stock of San Diego, would be detrimental to this objective. Moreover, we do not perceive any basis for finding that the acquisition would tend towards the development of an integrated public utility system.

Re Standard Power & Light Corp. (File No. 70-208, Release No. 2827).

Lawful Rates after Expiration of Rates Fixed by Franchise

THE supreme court of Michigan held that a gas company, after the expiration of a rate schedule fixed in a franchise, had the power to promulgate a new schedule of rates subject to the common law rule that the charge must be reasonable. The court ruled that the commission, rather than the court, had jurisdiction over complaints against such rates.

A claim by a municipality for an accounting by the gas company for moneys received in excess of the franchise rates was dismissed because the franchise had not been violated. The claim for an accounting had been predicated upon the premise that the circuit court having jurisdiction to enjoin illegal violation of the franchise had jurisdiction to grant the relief for an accounting. The city took the position that it still had the right to an accountng although it had waived relief by injunction because of subsequent action by the commission in fixing rates. *City of Dearborn v. Michigan Consolidated Gas Co. 297 NW 534.*

Other Important Rulings

THE Securities and Exchange Commission held that Morgan Stanley & Co., Inc., was not entitled to an exception from the rule barring payment of fees to affiliated underwriters in the underwriting of a proposed issue and sale of $120,000,000 principal amount of debentures of Columbia Gas & Electric Corporation where the record showed that the issuing company had made no effort to obtain competitive bids and where it appeared that several underwriters had indicated willingness and ability to head the proposed issue. *Re Morgan Stanley & Co. Inc. (File No. 65-9, Release No. 2748).*

Companies proposing to sell natural gas to local gas utilities for resale to the public and to furnish, under individual contracts with industrial consumers, interruptible supplies of gas in areas not served by existing gas utilities, were held by the Wisconsin commission to be natural gas companies within the purview of the Federal Natural Gas Act and, as such, to be charged with the obligations of public utilities, although not proposing to engage in the distribution and retail sale of gas to the public. *Re Wisconsin Natural Gas Co. (CA-1463, CA-1484).*

The supreme court of Illinois held that a gas company which receives gas at points where its local lateral transmission

lines intersect the parent company's interstate mains and which, after the pressure has been reduced, delivers the gas solely to local utilities which, in turn, serve the general public after the pressure has been further reduced, is engaged in intrastate commerce; and, therefore, the state commission has exclusive jurisdiction to require the company to serve a local utility at wholesale. *Central Illinois Public Service Co. v. Illinois Natural Gas Co. 32 NE(2d) 157.*

The Ohio commission held that it has jurisdiction over an appeal by a water company from an ordinance regulating water rates, notwithstanding that an ordinance granting a franchise to the water company also granted the municipality the right, after expiration of franchise rates, to refix the reasonable maximum rates to be charged by the company. *Ashtabula Water Works Co. v. City of Ashtabula (No. 11,186).*

The Pennsylvania commission held that a motor carrier's operations beyond the limits of his certificate violate the Public Utility Law although the transportation is in trucks owned and operated by another, when requests for service are made to the carrier, bills covering the service are presented to the shippers by him, and payment is made directly to him. *Zurcher v. Baracca (Complaint Docket No. 13341).*

The Illinois Supreme Court held that the commission's jurisdiction over railroad rates is confined to determining whether the rates will be unjust or discriminatory, that the initiation of a rate by a carrier is an attribute of management, and that the commission's disapproval of a freight rate based upon the rate-making principle that a joint haul must in all cases necessarily carry a higher rate than a single line haul between the same points conflicts with the principle that management remains in the utility. *Lowden v. Illinois Commerce Commission, 33 NE(2d) 430.*

The Colorado commission denied authority for an extension of a private carrier permit to include the larger concerns engaged in the manufacture, assembly, and sale of the commodities the operator was authorized to handle where this would in effect amount to authorization to serve customers without limit in the territory. The commission observed that common carrier service was adequate and the granting of the extension would tend to impair the efficient service of the common carriers. *Re Westerkamp (Application No. 3772-PP-B, Decision No. 17117).*

The St. Louis Court of Appeals, of Missouri, held that an electric company had no right to an injunction restraining the Rural Electrification Administration from making a loan to a rural electric coöperative association because of its fear of legitimate competition. It held further that the coöperative might sell current to a person, in a rural area, who was receiving central station service from another source. *Missouri Power & Light Co. v. Lewis County Rural Electric Coöperative Asso. 149 SW(2d) 881.*

The court of appeal of Louisiana, first circuit, held that an electric company was estopped from discontinuing service for nonpayment of charges by mere mailing of a printed cutoff notice, without additional warning that service would be cut off unless bills were paid by a certain date, where it had been permitting a consumer to pay electric bills after the due date without protest. *Milner v. Louisiana Public Utilities, Inc. 1 So(2d) 443.*

The supreme court of Florida held that a commission order granting a certificate to a private contract carrier was invalid where there was adequate existing service. *Central Truck Lines, Inc. et al. v. Railroad Commission et al. 1 SE(2d) 470.*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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Points of Special Interest

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TITLES

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v.

Federal Power Commission et al.

[No. 7454.]

(— F(2d) —.)

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[April 14, 1941.]

PETITION *for review of interim order of Federal Power Commission reducing rates of natural gas pipe-line company; order vacated and set aside. See 35 PUR(NS) 41.*

Before Evans and Sparks, C. J., and Lindley, D. J.

EVANS, C. J.: Presented for review is an interim order of the Federal Power Commission, directing the petitioners to reduce their rates on natural gas, so as to reflect an annual reduction in their operating revenues of not less than $3,750,000.

Petitioners own natural gas reserves in Texas. They produce the natural gas and transport it through their own pipe lines to the state of Illinois, where it is sold wholesale—90 per cent to one customer. They produce 75 per cent of the gas they sell and purchase the remaining 25 per cent from another producer. They were in business for nearly eight years before the Natural Gas Act (15 US CA § 717, et seq.[1]) became effective, June 21, 1938.

The interim order,[2] complained of,

[1] "Section 1. (a) As disclosed in reports of the Federal Trade Commission . . . it is hereby declared that the business of transporting and selling natural gas for *ultimate* distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

"(b) . . . this act shall apply to the transportation of natural gas . . ., to the sale . . . of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural gas companies engaged in such transportation or sale. . . .

"Section 4. (a) All rates and charges . . . shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

"Section 5. (a) Whenever the Commission, *after a hearing* had upon its own motion or upon complaint of any state . . . Commission, . . . shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural gas company . . . or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, *the Commission shall determine the just and reasonable rate*, charge, classification . . . or contract to be thereafter observed and in force, and shall fix the same by order: *Provided, however*, That . . . the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates."

[2] "The Commission . . . finds that:

"(1) The . . . Pipeline Company . . . is engaged in the transportation of natural gas in interstate commerce by means of its 24-inch natural gas main transmission pipe line, approximating 900 miles in length, extending from . . . Oklahoma . . . through Kansas, Nebraska, and Iowa, and into . . . Illinois . . . near Joliet; is also engaged in the sale in interstate commerce of natural gas so transported to various purchasers for resale for ultimate public consumption for domestic, commercial, industrial . . . uses; and is a 'natural gas company' within the meaning of the Natural Gas Act;

"(2) . . . approximating 90 per cent, of

was entered by the Commission, July 23, 1940, 35 PUR(NS) 41, 55, accompanied by a detailed memorandum showing the basis for the order. There were also specific findings. It was made upon a motion by respond-

the natural gas transported and sold by . . . Pipeline Company . . . is sold to the Chicago District Pipeline Company, for resale for public consumption, delivery being made near Joliet, . . . ;

"(3) The Texoma . . . Company . . . is engaged in the production . . . of natural gas in the Texas Panhandle field; . . . in the transportation of natural gas . . . by means of its 24-inch . . . pipe line, . . . 75 miles in length . . . from its compressor station in . . . Texas . . . into . . . Oklahoma to its sales meter and connection, near Gray's Junction, with the system of the . . . Pipeline Company . . .; is also engaged in the sale . . . of gas . . . for resale for ultimate public consumption for domestic, commercial, industrial, . . . and is a 'natural gas company' within . . . the act;

"(4) . . . approximating 90 per cent of the natural gas so produced . . . by the Texoma Natural Gas Company is . . . sold by it to the . . . Pipeline Company . . . at the aforesaid delivery point (in) . . . Oklahoma;

"(5) The Illinois Commerce Commission is a 'state Commission' within the . . . act;

"(6) The rates . . . charged, . . . by . . . Pipeline Company . . . for . . . the sales of natural gas . . . are subject to the jurisdiction of this Commission;

"(7) The . . . defendants . . . are . . . operated as a single enterprise . . .;

"(8) Until further order of this Commission and for the purpose of disposing of the motion before us, a rate base composed of the companies' estimates may be accepted, as follows:

"Reproduction cost new of physical properties (exclusive of gas reserves) as of June 1, 1939	$56,302,250
"Value of Gas Reserves as of June 1, 1939	13,334,775
"Capital additions from June 1, 1939, to December 31, 1942	3,808,399
"Working capital	975,000
Rate Base	$74,420,424

"(9) The total capital expenditures of the companies through December 31, 1954, less salvage (including all capital expenditures to date), based upon the companies' estimates, will be not more than $78,284,009, which is the amount on which provision for amortization should be calculated;

"(10) The period over which the provision for amortization should be calculated is the entire life of the properties, estimated by the companies to be twenty-three years, 1932–1954, inclusive;

"(11) . . . amortization should be calculated on a sinking-fund basis, with interest . . . at the rate of 6½ per cent per year, compounded annually;

"(12) The required annual allowance for amortization is $1,557,852;

"(13) The fair rate of return for the companies is not more than 6½ per cent per annum;

"(14) The annual amount necessary for a fair return to the companies is not more than $4,837,328, which, with . . . $1,557,852 for amortization . . . amounts to a total of $6,395,180, for amortization and a fair return.

"(15) The companies' annual net revenues . . . based upon the companies' estimates, averaged for 1939 to 1942, inclusive, will be $9,511,454, which will be reduced to approximately $9,362,032 as a result of the calculated increase in Federal taxes under the 1940 Revenue Act;

"(16) The companies' annual net revenues . . . exceed the amount reasonably necessary . . . by $2,966,852;

"(17) A reduction in annual net revenues of $2,966,852, together with the consequent reduction in the applicable Federal Income Tax, would permit a reduction in rates (gross operative revenues) of $3,750,000;

"(18) The rates and charges made . . . by defendants . . . are unjust, unreasonable, and excessive;

"(19) The rates and charges of defendants . . . after reflecting the reductions hereinafter ordered, will be just and reasonable:

"Therefore, the Commission *orders* that:

"(A) The rates and charges made . . . by defendants . . . shall be reduced to reflect a reduction of not less than $3,750,000 per annum in the operating revenues of . . . Pipeline Company . . .

"(B) Defendants . . . shall file on or before August 15, 1940, new schedules of rates and charges . . . which shall reflect the reduction in operating revenues ordered in paragraph (A) above, which new schedules . . . shall be effective as to all bills regularly rendered on or after September 1, 1940;

"(C) The Commission reserves the right to reject all or any part of such new schedules and in lieu thereof to prescribe the same by further order;

. . . . . .

"(E) The record herein shall remain open for such further proceedings as the Commission may deem necessary or desirable;

"(F) The motion by defendants . . . to dismiss the motion for immediate interim order reducing rates for want of jurisdiction . . . is denied;

ent, Illinois Commerce Commission, for an "immediate order." This motion was followed by petitioners' plea to the jurisdiction and an answer. The motion for the interim order was made before termination of a complete investigation, but after fifty-five days of hearing. The order was entered six months later.

Briefly stated, the Commission ordered the $3,750,000 reduction in revenues on the following fact assumptions:

Investment for rate base purposes (this was made up of reproduction cost, value of gas reserves, capital additions, and working capital.)	$74,420,424
A return of 6½% was allowed	6½
	$4,837,328
Annual amortization was added ..	1,557,852
(The amount allowed for amortization covered a period of 23 years, from 1932 to 1954.) Total deductions	$6,395,180
The adjusted average annual net income was	$9,362,032
The above determined required amount was	6,395,180
Excess	$2,966,852

The lessening of petitioners' income by this amount would result in an income tax saving. Hence the total reduction ordered was increased from $2,966,852 to $3,750,000.

A many sided attack on the order is made by the petitioners.

First, they challenge the Commission's jurisdiction to enter this order because:

(a) The only authority given by the act is to enter a final order.

(b) There is only authority to enter orders determining *rates* (§ 5, 15 USCA § 717d) whereas here the order directed reduction of income and left the company to determine the rates, which burden is doubled because they have contracts with varying rates, and they are not instructed how to apportion the reduction.

(c) The constitutionality of the act is attacked because the companies' business is a private business and this act, contrary to the Fifth Amendment, makes it subject to regulation as a public utility, and they have not even an opportunity to withdraw from business.

(d) The companies are not the kind of companies meant to be covered by the act.

(e) There has been a denial of due process because there has been no full hearing.

(f) Since the companies' existing rates are presumably reasonable, the Commission has the burden of showing the contrary, and it has not sustained its burden. It has merely provided for a return, barely *nonconfiscatory, rather than reasonable,* and ignored the fact that the profits arose from the operator's engineering skill and the fact that the profits accruing are but a reasonable reward for the risk involved.

(g) The Illinois Commerce Commission has no legislative authority to move for such an order, and the Federal Power Commission in moving for such order is acting as prosecutor and court.

Second, they challenge the interim

"(G) The motion by defendants . . . to dismiss the motion for immediate interim order . . . for want of sufficient evidence of record be and the same is denied;

"(H) This order shall not be construed as an acquiescence by this Commission in any estimates or determinations of original cost, or any valuation of property, claimed or asserted by said defendant. . . ."

order of the Commission on its accounting theories:

(a) The "base" taken by the Commission is wrong because it excluded the item of going concern value of $8,500,000; it permitted only $3,808,399, instead of $6,046,286, for future capital expenditures, and it refused to exclude from the base $2,866,758, for "viewed" depreciation. So, the base taken by the Commission ($74,420,424) was $7,771,129 less than the base contended for by the companies, —i. e., $82,291,553.

(b) The 6½ per cent return used by the Commission was unreasonably insufficient, and unsupported by the evidence. Not less than an 8 per cent return should have been allowed.

(c) The period taken for amortization was wrong, namely, it should have started from the effective date of the act, and not from the beginning of the companies' business.

(d) The base used for amortization, i. e., $78,284,009, was too low; it should have been $84,341,218.

(e) The amortization reserve should have been figured on a straight-line basis with the interest at the rate of 2 per cent semi-annually, instead of on the sinking-fund basis with interest at 6½ per cent compounded annually. The annual amortization allowance should have been $5,100,732, instead of $1,557,852.

[1–4] I. *Constitutionality of act as applied to petitioners.* The argument supporting this view runs like this: (a) Petitioners are not in fact, or law,[3] a public utility, and the legislative declaration that they are, is unconstitutional[4] and ineffective to make them such. They do not sell to the public. 98 per cent of their product is sold to wholesale customers. The price they charged has small effect on the consumer's cost because the service company's fixed charges are the dominant factor in ultimate cost to the public. Their gas is but an element in the product the public purchases, which also contains artificial gas. The fact that gas is widely used by the public is not important, for, they argue, so are meat, groceries, and many other unregulated commodities.[5] (b) The act changes an existing, wholly private industry into a public utility, burdened with many iron-bound mandates—all this without giving petitioners a right to withdraw from the harshness of such supervision, and is therefore a violation of the Fifth Amendment.[5½] They cite the fact that the act delegates to the Power Commission the power to choose their customers for them (§ 7, 15 USCA § 717f) and prohibits their dropping a customer,—unsatisfactory though he may be.

We conclude, without much doubt, that the Natural Gas Act is constitutional. It falls within the commerce

[3] Union Falls Power Co. v. Oconto Falls (1936) 221 Wis 457, 265 NW 722.

[4] Michigan Pub. Utilities Commission v. Duke, 266 US 570, 69 L ed 445, PUR1925C 231, 45 S Ct 191, 36 ALR 1105; United States v. Ohio Oil Co. (1914) 234 US 548, 58 L ed 1459, 34 S Ct 956; Producers Transp. Co. v. California R. Commission, 251 US 228, 64 L ed 239, PUR1920C 574, 40 S Ct 131.

[5] Tyson & Brother v. Banton (1927) 273 US 418, 71 L ed 718, 47 S Ct 426, 58 ALR 1236; New State Ice Co. v. Liebmann, 285 US 262, 76 L ed 747, PUR1932B 433, 52 S Ct 371; Williams v. Standard Oil Co. 278 US 235, 73 L ed 287, PUR1929A 450, 49 S Ct 115, 60 ALR 596; Wolff (Charles) Packing Co. v. Court of Industrial Relations, 262 US 522, 67 L ed 1103, PUR1923D 746, 43 S Ct 630, 27 ALR 1280.

[5½] Wolff (Charles) Packing Co. v. Court of Industrial Relations, *supra.*

clause of the Federal Constitution. The necessity for its enactment was legislatively declared in § 1 (a) (above quoted), and "it may not be annulled unless *palpably* in excess of legislative power."[6] Condemnation on this last-named ground lacks factual support in the instant case.

[6] Nebbia v. New York (1934) 291 US 502, 78 L ed 940, 2 PUR(NS) 337, 54 S Ct 505, 89 ALR 1469; Sunshine Anthracite Coal Co. v. Adkins (1940) 310 US 381, 84 L ed 1263, 60 S Ct 907; United States v. Appalachian Electric Power Co. (1940) 311 US 377, 85 L ed 201, 36 PUR(NS) 129, 61 S Ct 291.

Nebbia v. New York, *supra*, 2 PUR(NS) at pp. 344, 346, 349–353:

"Thus has this court from the early days affirmed that the power to promote the general welfare is inherent in government. . . . These correlative rights, that of the citizen to exercise exclusive dominion over property and freely to contract about his affairs, and that of the state to regulate the use of property and the conduct of business, are always in collision. . . . But subject only to constitutional restraint the private right must yield to the public need. . . . The Fifth Amendment, in the field of Federal activity, . . . do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. . . .

"The Constitution does not guarantee the unrestricted privilege to engage in a business or to conduct it as one pleases. Certain kinds of business may be prohibited; and the right to conduct a business, or to pursue a calling, may be conditioned. Regulations of a business to prevent waste of the state's resources may be justified. And statutes prescribing the terms upon which those conducting certain businesses may contract, or imposing terms if they do enter into agreements, are within the state's competency. . . .

"We may as well say at once that the dairy industry is not, in the accepted sense of the phrase, a public utility. We think the appellant is also right in asserting that there is in this case no suggestion of any monopoly or monopolistic practice. It goes without saying that those engaged in the business are in no way dependent upon public grants or franchises for the privilege of conducting their activities. But if, as must be conceded, the industry is subject to regulation in the public interest, what constitutional principle bars the state from correcting maladjustments by legislation touching prices? We think there is no such principle. . . . This court concluded (Munn v. Illinois [1877] 94 US 113, 24 L ed 77) the circumstances justified the legislation as an exercise of the governmental right to control the business in the public interest; that is, as an exercise of the police power. . . . 'Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large'. . . . Thus understood, 'affected with a public interest' is the equivalent of 'subject to the exercise of the police power'; . . . The statement that one has dedicated his property to a public use is, therefore, merely another way of saying that if one embarks in a business which public interest demands shall be regulated, he must know regulation will ensue. . . .

"Many other decisions show that the private character of a business does not necessarily remove it from the realm of regulation of charges or prices. . . . Private contract carriers who do not operate under a franchise, and have no monopoly of the carriage of the goods or passengers, may, since they use the highways to compete with railroads, be compelled to charge rates not lower than those of public carriers. . . .

"It is clear that there is no closed class or category of businesses affected with a public interest, and the function of courts in the application of the Fifth and Fourteenth Amendments is to determine in each case whether circumstances vindicate the challenged regulation as a reasonable exertion of governmental authority or condemn it as arbitrary or discriminatory. . . .

"So far as the requirement of due process is concerned, and in the absence of other constitutional restriction, a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose. The courts are without authority either to declare such policy, or, when it is declared by the legislative arm to override it. If the laws passed are seen to have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied, and judicial determination to that effect renders a court functus officio. . . . Times without number we have said that the legislature is primarily the judge of the necessity of such an enactment, that every possible presumption is in favor of its validity, and that though the court may hold views inconsistent with the wisdom of the law, it may not be annulled unless palpably in excess of legislative power."

Sunshine Coal Co. v. Adkins, *supra*, 310 US at pp. 394–396:

"Nor does the act violate the Fifth Amendment. Price control is one of the means available to the state . . . and to the Congress . . . in their respective domains . . . for the protection and promotion of the public welfare of the economy. But appellant claims that this act is not an appropriate exercise of the congressional power.

We appreciate, and may concede, the force of petitioners' factual distinction of the Nebbia, the Sunshine and Appalachian Cases, *supra*. They all involved, it is true, critical, economic conditions which demanded legislative solution, and such critical condition and urgent necessity of immediate control are here absent. But, where a legislative determination is based upon a very extended administrative investigation, which concluded that an industry was affected with a public interest and that Federal regulation thereof was necessary and that said business or industry is producing and transporting natural gas to be sold to gas companies engaged in public utility businesses in cities and villages, there exists no basis for a successful attack on such determination.

The natural gas industry controls the source of a commodity of great public importance and widespread consumption, and therefore its regulation by Congress may well be required. At least, Congress, in its wisdom, may so conclude. Courts cannot, and should not, assume a greater wisdom than Congress, and find otherwise. The court's function, at most, would be limited to an inquiry as to the existence of facts which would support legislative determination.

[5, 6] II. *Form of Order*, i. e., ordering a *reduction of income* of a designated amount, and not determining *precise rates* to be charged. Petitioners challenge, and respondents do not discuss the challenge, that the Commission's authortiy is only to "determine the just and reasonable *rate* . . . and shall *fix* the same by order." (Section 5, 15 USCA § 717d.)

The order of the Commission found the existing rates unreasonable and excessive, and ordered *that they be reduced* to reflect a decrease of $3,750,000 in operating revenues. This order did not *"determine"* the rates. But it evidenced the conclusion that the existing rates were too high and should be lowered such an amount as would reflect a specific reduction in profits.

The resulting rate might vary, depending upon which class of purchasers should be favored. It failed to name the customer (the utility, the commercial, or the industrial purchas-

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It urges that the nature and use of bituminous coal in no wise endangers the health and morals of the populace; that no question of conservation is involved; that the ills of the industry are attributable to overproduction. . . . Those matters, however, relate to questions of policy, to the wisdom of the legislation, and to the appropriateness of the remedy chosen—matters which are not our concern. If we endeavored to appraise them we would be trespassing on the legislative domain. And if we undertook to narrow the scope of Federal intervention in this field, as suggested by appellant, we would be blind to at least thirty years of history. . . .

"It was the judgment of Congress that price fixing and the elimination of unfair competitive practices were appropriate methods for prevention of the financial ruin, . . . in this industry. . . . To invalidate this act we would have to deny the existence of power on the part of Congress under the commerce clause to deal directly and specifically with those forces which in its judgment should not be permitted to dislocate an important segment of our economy and to disrupt and burden interstate channels of trade. . . . The commerce clause empowers it to undertake stabilization of an interstate industry through a process of price fixing which safeguards the public interest by placing price control in the hands of its administrative representative."

United States v. Appalachian Electric Power Co. *supra*, 36 PUR(NS) at pp. 147, 148:

"In truth the authority of the United States is the regulation of commerce on its waters. . . . That authority is as broad as the needs of commerce. . . . The congressional authority under the commerce clause is complete unless limited by the Fifth Amendment."

ers) and the degree of reduction to be allocated inter se. The Commission determined the underlying factors determinative of a rate sufficient to produce a fair and reasonable profit. The order left the companies free to apportion the reduction among the customers.

This action, while irregular and unusual, we believe, in rate determining Commissions, was in no way harmful or prejudicial to the companies. In fact, it was favorable to them. It lodges a discretion—or play—in them whereby they might adjust the rates in the various classifications as may to them seem meet. Doubtless they will have some difficulty convincing their customers of the fairness of the reduction. But the difficulty is present, whether the regulating Commission or the utility makes the adjustment. The fact that the rate is lessened, rather than increased, should not be overlooked.

We are convinced, and so hold, that petitioners to successfully attack an order of the Commission, must show they are aggrieved by the part of the order assailed. We find no prejudice to petitioners in the form which the order took.

III. *Existence of substantial evidence* to support Commission's finding that present rates are unreasonable.

This query brings us to the merits of this appeal—to the heart of the controversy.

The statute (§ 19, 15 USCA § 717r) provides: "The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive."

It also provides that, "No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do."

Petitioners contend that the record is absolutely wanting in any evidence that their existing charges are unreasonable, "unless it be the circumstance that their earnings exceed a 6½ per cent rate of return . . .," and they further contend that returns must be " 'enormously disproportionate' before they are even 'some' evidence that the charge yielding the return may be excessive."

They present an amazingly interesting picture of the difficulties of long-distance transportation of natural gas, of the tremendous effort, skill, and risk taken by these companies, of the extraordinary improvements necessary in pipe construction and other apparatus, of economic management of business—securing fill-in contracts in slack periods, and maintaining high loads in pipe lines, without which petitioners' business would be on the rocks (or invoking § 77B of the Bankruptcy Act, 11 USCA § 207) instead of perplexing Commissions and courts with questions arising out of large profits.

They most urgently point out that a profit which exceeds a barely nonconfiscatory return is not ipso facto an unreasonable or illegal return.[7] There-

[7] Banton v. Belt Line R. Corp. (1925) 268 US 413, 69 L ed 1020, PUR1926A 317, 325, 45 S Ct 534.

"A Commission or other legislative body, in its discretion, may determine to be reasonable and just a rate that is substantially higher than one merely sufficient to justify a judicial finding in a confiscation case that it is high enough to yield a just and reasonable return on the value of the property used to perform

fore, the Commission's reduction of profit based solely on a finding of unreasonableness because the profit exceeded said barely nonconfiscatory return is without evidentiary support, and the Commission's order must fall.

The Commission answers this argument by pointing out the precedents announced in the Labor Act Cases, specifically the Link Belt Labor Case, decided January 6, 1941, and other Federal acts involving review of action taken by administrative boards, by courts, and say, if there be any evidence to support the finding, it must stand. In fact, it is then removed from the field of judicial inquiry and review.

The Commission also points out that the companies nowhere raised the point of lack of substantial evidence, and so are now (by virtue of the statutory provision in review, above quoted) precluded from so objecting. A complete answer to the contention that the companies failed to object to the substantiality of the evidence to support the finding is to be found in petitioners' assignment of error in their petition for rehearing:

"The Commission erred in finding that the rates and charges presently charged by petitioners are unjust, unreasonable, unlawful, and violative of the provisions of the Natural Gas Act."

While the assignment is broad, it is supplemented by others which make it clear, what must have been obvious throughout the many days when testimony was being taken, that petitioners were denying, as a matter of fact, the unreasonableness of the rates in force. Other assignments of error, in the petition for rehearing before the Commission, complained of related points, to wit:

"The Commission erred in not holding that the proper rate base is the present value of the property, which, under the uncontradicted evidence, is made up of. . . ."

Also, "The Commission erred in holding that the sum of $8,500,000 claimed by applicants as going concern value is an arbitrary claim not supported by substantial evidence."

"It is supported by substantial evidence which is uncontradicted."

[7, 8] Petitioners attack the order because "The Commission is without power and jurisdiction to enter an interim order."

The fatal weakness of this contention lies in counsel's failure to choose a true perspective—make a proper approach to the policy of governmental regulation (as evidenced by this legislation), of the natural gas industry, which includes its production, transportation, and distribution. Like other legislation of this character, it should be liberally construed and interpreted, so as to embrace, within its scope, the implied powers necessary to an exercise of the expressly granted powers. In petitioners' argument there is a tendency, which is somewhat characteristic of arguments in cases which attack powers of Congress and the procedure of the regulating Commission, to observe, "I do not find it written in the bond."

There can be no question that the act confers upon the Commission the power to make a final order. Had the

the service covered by the rate. The mere fact that a rate is nonconfiscatory does not indicate that it must be deemed to be just and reasonable. It is well known that rates substantially higher than the line between validity and unconstitutionality properly may be deemed to be just and reasonable, and not excessive or extortionate."

Commission closed its hearing and then made the order in question, it would have come within its expressly delegated powers.

We take it that this argument goes so far as to deny to the Commission, authority to do anything else; that it could not make an interim order even upon consent of the parties. In other words, if we accept this contention, a hearing might proceed to a point where all the petitioners' testimony was received, and they had rested their case; upon which showing it was conceded an order reducing charges should be made; that the utility's consent thereto was formally given,—even then the Commission would be powerless to make an order, because perchance it wished to inquire further into certain practices and charges which affected rates only indirectly which matters the petitioners were particularly anxious to have settled. Such a holding would do violence to the purpose and object of the legislation.

While the practice and construction of powers of a court of equity are not necessarily controlling, they supply a lamp to guide courts in determining the extent to which they may imply powers from the grant of express powers. Not seriously would it be argued that a court of equity given jurisdiction of a subject and granted the express power to make a final order to fix rates was powerless, on a proper showing, to make an interim order limiting profits.

We must, and do, hold that upon a proper showing, and when the hearing has reached a stage where the Commission may determine that a reduction (or an increase) of rates should be made, it may (and should) make such order, even though the hearing be not completed.

Rate of Return

[9–14] Petitioners advance three propositions in respect to the findings and the deductions from said findings of the Commission upon the rate of return. The Commission found a return of 6½ per cent was fair and reasonable. Petitioners say: (a) Their earnings, which exceeded this rate, do not evidence unreasonableness; (b) Reasonableness of rates is determined "not by what profit it is reasonable to make, but what it is reasonable to charge for the services rendered"; (c) The rate of return fixed by the Commission at 6½ per cent was, in view of the facts of this case, grossly inadequate.

We reject, without extended discussion, the contentions (a) and (b). They ignore the well-established holdings, backed by reason and experience, to the effect that a fair rate of return, on a fairly established rate base, supplies the correct test of reasonableness.[8] The value of the service to users is neither a reasonable rule, nor supported by judicial decisions.

This seems too elementary to require elaboration or supporting argument. Likewise, it must be apparent, on this theory of correct rate making, that the rate of return not only may, but, in a utility rate case, must be, the largely determinative factor of reasonableness.

(c) The reasonableness of a 6½ per cent rate of return presents a question altogether different from (a) and

[8] Los Angeles Gas & E. Corp. v. California R. Commission, 289 US 287, 77 L ed 1180, PUR1933C 229, 53 S Ct 637.

(b). It is perplexing and incapable of determination with certainty, in view of the peculiar facts of this case. Out of the mass of decisions pertaining thereto, a rule may be stated with comparative ease, but its application is quite as difficult as the statement is easy.

A fair return is to be largely measured by the usual returns in like investments in the same vicinity over the same period of time.

What are like investments? What are the years we must use to ascertain the going rate of return for said like investment? Relativity seems to be highly present both in the term "like investment" and in the years for which fair earnings must be ascertained.

Ignoring, for the moment, the kind of investment involved, and looking only to rate of return, as such, on investments only, we take judicial notice of the fact that interest rates in most fields have declined in the last decade as much as 75 per cent. For example, call money rates in New York dropped from 8 per cent in 1929 to $\frac{1}{8}$–$\frac{1}{4}$ of 1 per cent. Interest rates on Class AAA bonds have dropped enormously. Secure, but less highly rated, bonds have shown a like lowering of interest return.

What years should be chosen to determine the fair rate of yield? More uncertain still, what will the thirteen future years bring forth? Will the rise in rate of return be as great and as rapid as has been the decline during the last decade?

But, if there be doubt and uncertainty as to the correct dates and rates, past and future, for interest charge determination on safe investments, they are inconsequential as compared to the variance in returns on well secured, as compared to returns on highly speculative, investments.

The demanded rate of return, since the crash of 1929 and the bank failure period immediately following it, has been almost fatal to speculative investments. The investing public has emphasized safety, and shied from the speculative. That the investment in petitioners' enterprise in 1932 was highly speculative, cannot be successfully gainsaid. A "fair rate of return," on this highly speculative investment, should not be affected by the extraordinary success which has marked its record for the latter part of its existence. The ascertainment of a fair return should be approached as of the year 1932, with the trier looking forward, rather than from the seat in the reviewing stand erected in 1940 and looking backward to 1931.

Even today, with a splendid record of current success behind it, the investment belongs in the speculative class.

This enterprise is based on a deposit of natural gas some 4,000 feet beneath the surface of the earth. It is in Texas, some 2,500 miles from the consumer. Its successful operation necessitated a capital of from $75,000,000 to $84,000,000. Its life is limited to the time when the wells will be exhausted. This would be in 1954. At least a tenth of the period was devoted to construction, during which time there was no income.

Upon such a fact statement, and notwithstanding confidence in the expert opinion of geologists, scientists, and engineers may be great, there are factors which necessitate the use of a

question mark, after many a fact statement or opinion.

The case was one which hardly permitted of enlightenment from expert witnesses, who gave their opinions to the Board (and to us) respecting a fair rate of return. They were overwilling, and the indifference of some of them to opinions expressed by them on other occasions lessened the weight of their evidence.

Moreover, their opinions showed differences were unavoidable and traceable to the varying influences of different factors.

Bearing in mind that our function is to review, not to make, findings of fact, and also keeping to the front the current low rates of return on all investments, and also bearing in mind that the future may bring changes by the Commission in its finding of 6½ per cent as a fair rate of return, we conclude that there is substantial evidence to support the Commission's finding.[9]

Rate Basis

We now approach petitioners' several contentions respecting the Commission's failure

(a) to include a sum for going value,

(b) to fix the proper period for amortization,

(c) to make adequate allowance for future capital additions,

(d) to take 2 per cent instead of 6½ per cent interest on the sinking fund.

We need only discuss the first two contentions. If we accept either of them, the order must fall.

The facts are not much in dispute. Petitioners place the lowest figure for going value at $8,500,000. The Commission refused any sum for this factor.

Petitioners contend the amortization period should be fourteen years and five months. The amount to be amortized was $84,341,218. The Commission fixed the amortization period at twenty-three years and the amount to be amortized at $74,420,424.

We are persuaded of the soundness of both of petitioners' contentions, (a) and (b).

Going Value

[15, 16] (a) An allowance for going value is necessitated, due to facts peculiar to this case. In the ordinary public utility case, with no unusual fact or circumstance to affect a court's consideration of it, we assume that going value, as a properly includable item in the rate base, should and would be rejected. Driscoll v. Edison Light & P. Co. *supra*. Our duty, to follow the Supreme Court rulings on this and all other questions, necessitates our making all the turns in the road, both left and right, which the teaching of experience has caused our guide to blaze through new and un-

[9] United Gas Pub. Service Co. v. Texas (1938) 303 US 123, 82 L ed 702, 22 PUR (NS) 113, 58 S Ct 483; West Ohio Gas Co. v. Ohio Pub. Utilities Commission (1935) 294 US 63, 79 L ed 761, 6 PUR(NS) 449, 55 S Ct 316; Driscoll v. Edison Light & P. Co. (1939) 307 US 104, 83 L ed 1134, 28 PUR (NS) 65, 59 S Ct 715; Smith v. Illinois Bell Teleph. Co. (1930) 282 US 133, 75 L ed 255, PUR1931A 1, 51 S Ct 65; United Fuel Gas Co. v. Kentucky R. Commission 278 US 300, 73 L ed 390, PUR1929A 433, 49 S Ct 150; Dayton Power & Light Co. v. Ohio Pub. Utilities Commission (1934) 292 US 290, 78 L ed 1267, 3 PUR(NS) 279, 54 S Ct 647; West v. Chesapeake & P. Teleph. Co. (1935) 295 US 662, 79 L ed 1640, 8 PUR(NS) 433, 55 S Ct 894.

traveled fields of regulation of quasi-public businesses.

The factors present in the instant case, not found in the old and well-established field of public utility regulation, which affect (b) as well as (a) are: The period of petitioners' life is fixed and rather short; the natural gas field will be exhausted in 1954 (the date and the fact are not in dispute). Distinguishably different is the electric light and power field where the life of the enterprise has, in some instances, already exceeded five decades and may go on growing in strength and stability indefinitely. Moreover, great uncertainty marks this 13-year period and the constancy of petitioners' natural gas wells.

Another difference is to be found in the fact that Congress had not declared its public policy to regulate petitioner's business when it started this enterprise. Nor did Congress act until one-third of petitioners' life had expired. During that period, their business was built on the theory that they must find and satisfy their customers —must act on the assumption that rates and volume of business must depend upon and find justification in the future, rather than in the present, business.

Still another difference, however, was the newness of natural gas in Chicago, and therefore the uncertainty of customers and business. Then, too, there were the difficulties incident to the engineering problems, which arose from the task of conveying natural gas 2,500 miles over mountains and under rivers to unknown prospective customers. The successful and satisfactory mixing of natural with artificial gas presented, in 1932, problems which the well-established gas companies and their engineers viewed with deepest doubt and dire misgivings.

The losses of the first years supplied persuasive evidence that the investment was highly speculative and an adequate return on the capital invested depended largely upon the business acumen, the engineering skill, and administrative efficiency of their officers, to overcome these losses and develop a profit in this newly regulated industry. Under such circumstances it seems that fairness necessitates the capitalization and inclusion of such skill—aye, and hazards—as legitimately as the cost of pipes. The natural gas was valueless as it lay in the Texas wells, 4,000 feet beneath the surface of the earth, over 2,000 miles from Chicago. What gave it value? Not alone pipes to carry it, nor pumps to pump it. It was the courage of the investors, and their willingness to take a chance in a speculative venture, the vision to see and to forecast, the integrity of management, and the knowledge of geologists, etc., which gave to the enterprise its life; and the product of these combined factors made for a going value, which, in the realities of the business world, is justly recognized as part of the value of the investment. It is the existing fact situation peculiar to this case which calls loudly for the inclusion of a sum for going value, as such. Nor can we fairly apply the law save as we first study the facts, and get the proper setting of the natural gas industry in the utility field. The Commission has not included its equivalent in any of the items which went to make up its rate base. If allowable at all, there

can be no serious objection to fixing the sum, as the petitioners contend, at $8,500,000.

The Commission argues that in fixing the value of the rate base as high as $74,420,424, it gave full recognition to petitioners' business as a going business concern. This statement is contrary to the memorandum filed by the Commission with its findings. The $74,420,424 was made up of

Reproduction cost new of physical properties	$56,302,250
Value of gas reserves	13,334,775
Capital additions for the period June 1, 1939, to December 31, 1942	3,808,399
Working capital	975,000
Total rate base	$74,420,424

The total is the amount which the Commission adopted as its rate base. It does not include going value.

Moreover, in its opinion, the Commission said: "The companies' claim of $8,500,000 for going concern value must be disallowed. The amount obviously is an arbitrary claim, not supported by substantial evidence warranting its allowance. Its allowance would mean the acceptance of a deceptive fiction, resulting in an unfair imposition upon consumers." (35 PUR(NS) at p. 50.)

In the face of this statement we must assume that the Commission did not allow any sum for going value.

[17] *Period of amortization.* Here, again, we find of dominating importance, the newness and lack of precedent among the conditions similar to those found in this industry. In ascertaining petitioners' profits, the amount deducted for amortization is most important. Petitioners assert the period should be fourteen years, five months,—the difference between the date of these proceedings and the date when the gas will be exhausted. Respondents, on the other hand, begin their period in 1932. In other words, the Commission adopted a 23-year period, whereas petitioners figured on a 14-year 5-month period.

In addition to the reasons for our conclusions respecting contention (a), the significance of the date when the business enterprise became subject to governmental regulation is of dominant significance. It is important, too, as bearing on the rate-making power of Congress. Avoidance of conflicts with the Fifth Amendment of the Constitution is involved. Petitioners' position avoids the conflicts; respondents' creates an unavoidable class.

Before Congress enacted this legislation in 1938, petitioners were free to contract and did contract with customers on a basis which they deemed wise. After that act passed, their business, and particularly their rates, were subject to regulation and fixation by respondents. The size of their profits depends upon their earnings for the next thirteen years. These, in turn, depend largely upon the sums allowed for amortization of the value of the property as it then existed and was then valued. Petitioners assert an annual amortization sum of $5,100,732. Respondents fixed the sum at $1,557,852.

The position we take in nowise reflects upon the wisdom of the new legislation. That legislation looks to the future protection of the public. It deals with conditions which existed at the time the legislation was enacted. It neither gave, nor took away, value to going concerns, whose lives were short and limited by fact conditions

which neither the producer nor the consumer could change. For these reasons, we conclude the amortization period, for rate-making purposes, should be fourteen years, five months, instead of the period of twenty-three years adopted by the Commission.

As was said in United R. & Electric Co. v. West, 280 US 234, 74 L ed 390, PUR 1930A 225, 231, 50 S Ct 123:

"It is the settled rule of this court that the rate base is present value."

See also Brooks-Scanlon Corp. v. United States (1924) 265 US 106, 123, 68 L ed 934, 44 S Ct 471; United Fuel Gas Co. v. Kentucky R. Commission, 278 US 300, 73 L ed 390, PUR 1929A 433, 49 S Ct 150.

It would seem to follow logically that if the rate base is determined as of the date of the hearing, the amortization period would be for the life of the property from that same date. All the cases dealing with this subject are distinguishable in at least one respect. In the instant case, the end of the period is fixed by the exhaustion of the natural gas wells. In other words, the end is near. In the ordinary electric light, gas, or water rate case, the amortization period is long—covering the life of the pipes—well-nigh a century.

In the absence of authority, it would seem fair and reasonable to fix the amortization period not earlier than the date when Congress subjected the industry to regulation.

Other attacks upon the orders are presented by the petitioners, which we believe it unnecessary to pass upon. The hearing is not completed and some findings of fact may be changed, and the proof may be so conclusive that no attack will then be made.

All such evidence will, of course, be heard and passed upon by the Commission before entering its final order.

The order of the Commission is vacated and set aside.

SECURITIES AND EXCHANGE COMMISSION

Re Middle West Service Company et al.

[File No. 37-6, Release No. 2696.]

Intercorporate relations, § 19.91 — Subsidiary service company — Interlocking officers.

1. Common officers of a subsidiary service company and a parent corporation must either sever their connection with one company or the other, or be paid their entire salaries by the parent company, in order to achieve compliance with § 13 of the Holding Company Act, 15 USCA § 79m, p. 280.

Intercorporate relations, § 19.9 — Subsidiary service company — Payment of common officers.

2. A parent company which pays the salaries of common officers of the parent and of a subsidiary service company must also pay the salaries of

the various subordinates whose activities so closely reflect those of the interlocking officers that a fair and accurate allocation of time cannot be achieved, p. 281.

Intercorporate relations, § 19.91 — Subsidiary service company — Identity with holding company.

3. Section 13(a) of the Holding Company Act does not permit a holding company to act through a subsidiary service company which is completely identical with the holding company, p. 281.

Intercorporate relations § 19.9 — Subsidiary service companies — Traveling expenses of common directors.

4. A subsidiary service company was required to cease to pay traveling expenses of common directors of the service company and of a parent corporation, p. 282.

[April 16, 1941.]

ORDER *to show cause why certain changes should not be made in the organization of a subsidiary service company and in the conduct of its business and its relations with affiliates; conclusions made as to requirements in order to comply with standards of § 13 of the Holding Company Act*

APPEARANCES: Thomas J. Tingley and Mary C. Sheehy, for the Public Utilities Division of the Commission; Ralph D. Stevenson, for Middle West Service Company and the Middle West Corporation.

By the COMMISSION: By findings and an order entered July 31, 1936, we approved, pursuant to § 13 (b) of the Public Utility Holding Company Act, 15 USCA § 79m, and the applicable rules thereunder, the organization and method of operation as a subsidiary service company of Middle West Service Company. Our findings and order expressly reserved jurisdiction to require changes in methods of determining and allocating costs and such other changes as might be necessary to effect compliance with rules, regulations, or orders respecting matters "designed to insure fair and equitable allocation of costs or the other objectives of § 13." Re Middle West Service Co. 1 SEC 606, 608.

On August 21, 1940, we issued our decision in the case of Re Ebasco Services Incorporated.[1] In the Ebasco proceeding, we discussed at some length the problem of interlocking officers, directors, and employees in the light of the requirements of § 13. In that case it appeared that what purported to be an allocable portion of the salaries of various officials of Electric Bond and Share Company, the holding company in the system, was charged, through the medium of the service company, to the operating utility subsidiaries. In our opinion, we referred to the pertinent provisions of the act and held that, since it was impossible to achieve a fair allocation of the salaries of common officers, the interlocking arrangements were not

[1] 7 SEC 1056, 35 PUR(NS) 258, Holding Company Act Release No. 2255.

consistent with § 13 and must be discontinued. We recognized that somewhat similar interlocking arrangements had been permitted in the past, but held that our action in granting approval of such relationships had been erroneous and in this respect we overruled previous precedents.

In order to apply the principle of our decision in the Ebasco Case with respect to service companies whose organizations had previously been tentatively approved, we directed our Public Utilities Division to examine the various service companies subject to our jurisdiction in the light of the statutory requirements as applied in the Ebasco opinion. Pursuant to these instructions, a letter was sent to all such service companies, requesting them to consider the problem of interlocking officers and directors and to advise the Commission as to what steps they proposed to take to eliminate such interlocking arrangements. Formal proceedings were commenced and are now pending with respect to several holding companies and their respective service companies for the purpose of examining the problem of interlocking officers and directors in each such system. One of these proceedings has been concluded and in our findings and opinion in that case we applied and elaborated on the principles discussed in the Ebasco Case. See Re United Light & Power Service Co. (1941) 8 SEC —, 38 PUR(NS) 120, Holding Company Act Release No. 2608.

The instant proceeding was instituted by an order, entered October 21, 1940, directing the Middle West Corporation, a registered holding company (hereinafter sometimes referred to as "Middle West" or the "parent corporation"), and its wholly owned subsidiary, Middle West Service Company (hereinafter sometimes referred to as the "service company"), to show cause:

(1) Why such changes should not be made in the organization of the service company and the conduct of its business as may be necessary for the purpose of discontinuing the payment of salaries and compensation to any officers, directors, or employees who are also officers, directors, or employees of, or who render or perform services for, the Middle West Corporation, or for any other registered holding company, so as to insure that service, sales, and construction contracts are performed economically and efficiently for the benefit of associate companies at cost, fairly and equitably allocated among such companies in accordance with § 13 of the Public Utility Holding Company Act and the rules thereunder; and

(2) Why the Middle West Corporation should not take appropriate action to cause those of its officers, directors, and employees who are paid wholly or in part, directly or indirectly, by its subsidiaries to sever their relationship with Middle West, or, in the alternative, that Middle West pay in full the entire compensation of all such officers, directors, or employees.

The order further directed that such other matters be considered as may be necessary to insure compliance with the standards of § 13 and of the rules and regulations thereunder.

After appropriate notice, a public hearing was held before a trial examiner. A trial examiner's report was

waived. Briefs were submitted and we heard argument.

Organization of the Service Company

The service company was organized in Illinois in January, 1936, for the purpose of supplying managerial services to associate companies in the Middle West System, including both operating companies and holding companies. These services had previously been performed by the parent corporation and the service contracts held by it were transferred to the service company.

The service company is departmentalized into the following units: executive, operating, corporate finance, treasury, comptroller-accounting, commissions and special work, traveling auditing, Federal income tax, budget and analysis, miscellaneous, engineering, purchasing, commercial, rate, legal, and corporate reorganization.

During the year 1939, forty-one associate companies and four nonassociate companies were serviced "at cost," pursuant to contracts. In addition, twenty-one nonassociate companies were serviced on a profit basis.

Cost Allocation and Charges

The operating companies in the Middle West system are charged fees which are estimated, annually, not to be in excess of .6 of 1 per cent of the annual gross operating revenues of the respective companies. Payments upon this basis are made monthly, but periodic adjustments are effected in accordance with the cost allocation and charge procedure of the service company. The cost of services to companies in the system is computed upon the following basis:

Direct charges:

Traveling expenses are billed at cost. Traveling audit services are charged on a time-engaged basis at actual payroll costs in addition to a loading for nonproductive time. Charges for services performed for the Middle West Corporation and its subsidiary holding companies and the Consolidated Coach Company are determined on a time-engaged basis at actual payroll costs, in addition to a loading for general overhead.

Allocated charges:

The receipts for direct charges are deducted from the total costs of the service company, and the balance, excluding Federal income tax, is prorated among the companies served (including companies served at other than cost) on the basis of operating revenues as adjusted pursuant to the terms of the service contract, and the companies serviced at cost are charged the respective amount prorated to them.

The companies which are serviced at other than cost are charged on the following basis:

Direct charges:

Traveling expenses are billed at cost. Traveling audit services are charged on a time-engaged basis at the rate of $25 per diem. Income tax services are charged on a time-engaged basis at rates ranging from $10 to $75 per diem, according to the experience and qualifications of the individual engaged.

Other charges:

The charge for all other services is determined upon the basis of .8 of 1 per cent of certain operating revenues as adjusted (the base being the same

as for allocating charges to associate companies), but not less than the cost of the services.

The services performed for the parent company and other holding companies in the system by the service company consist of the following:

(1) Preparation of a consolidated statement for the holding company and statistics concerning the operations of the holding company's system.

(2) Preparation of applications, statements, and reports required by this Commission.

(3) Assistance in hearings before this Commission in all matters pertaining to holding companies.

(4) Preparation of plans for reorganization, refinancing, and recapitalization of holding companies.

(5) Preparation of income tax returns of holding companies and related matters.

(6) Preparation of audit for companies in which the holding companies have investments to the extent desired by the particular holding company.

(7) Assistance in all questions arising in connection with the accounting of the holding companies.

The Interlocking Directors, Officers, and Employees in the Service Company and the Parent Corporation

The service company, with an authorized capital stock of 500 common shares, no par value, has outstanding 100 shares, the stated value of which is $1,000. All of these shares are owned by Middle West which, in addition, is the sole creditor of the service company in an amount of $100,000.

The personnel of the directorate of both the service company and the parent company is identical, each board consisting of seven men.[2] Each of these directors receives an annual salary of $3,000, which is paid by the parent.[3] The traveling expenses of the directors are shared equally by both companies.

Five of the officers of the service company are directly employed by the parent company and receive salaries from both companies. P. L. Smith, president, director, and chairman of the executive committee of the parent corporation, is the chairman of the board of directors of the service company and receives a salary of $25,000 a year from the service company and $25,000 a year from the parent corporation. W. C. Freeman, who, as vice president of Middle West, is paid $10,500 a year, is in charge of the reorganization division of the service company at an annual salary of $14,500. W. P. Zech, who holds the position of comptroller in each corporation, receives an annual salary of $18,000 divided equally between the two corporations. O. E. McCormick, who, as treasurer of Middle West, receives $2,000 yearly, is the secretary of the service company at a salary of $14,000. R. D. Stevenson, counsel for both corporations, receives an annual retainer of $20,000 from the service company and $10,000 from the parent corporation. The apportionment of compensation for these individuals (other than Smith) is deter-

[2] These men are P. L. Smith, Robert Golding, Hugh McKee, I. L. Porter, Adolphe Boissevain, Martin Lindsay, and Charles K. Wilmers.

[3] Article VI of the bylaws of the service company provides that directors, as such, shall receive no stated salary for their services.

mined each year by the particular officer involved whose recommendation to the board of directors is generally accepted.

The immediate staff of Smith, Freeman, Zech, McCormick, and Stevenson, the five interlocking executive officers, comprises eighteen individuals, including five personal secretaries and thirteen technical assistants. The technical assistants, in addition to acting as such, either directly or in conjunction with the five executive officers, supervise eight of the sixteen departments into which the service company is divided.

The salaries of the eighteen members of the immediate staff of the interlocking executive officers, for the nine months ending September 30, 1940, aggregated $75,210. In the case of only ten of these individuals was any attempt made to allocate charges to the parent company for their work. The remaining members of the staff, including the five personal secretaries, kept no time records and the entire burden of their salaries was borne by the service company.

The total compensation paid to all employees of the service company for the nine months ending September 30, 1940, was $344,861.13. Of the 107 officers and employees, 51 maintain records of the time devoted by them to particular holding companies, operating companies, or both.[4] It is doubtful, however, whether these time cards can or do accurately reflect the incidental work performed, directly or indirectly, for the interlocking officers in their dual capacities. As has been noted above, eight members of the immediate staff of the five interlocking officers do not even attempt to keep time records. The record is not entirely clear as to the extent to which other employees who do not keep time records performed ministerial services, directly or indirectly, for the five executives in their mixed functions.

. . . . . .

1. Sections 13 (a) and (b) of the act, 15 USCA § 79m, provide, as follows:

"(a) After April 1, 1936, it shall be unlawful for any registered holding company, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to enter into or take any step in the performance of any service, sales, or construction contract by which such company undertakes to perform services or construction work for, or sell goods to, any associate company thereof which is a public utility or mutual service company. This provision shall not apply to such transactions, involving special or unusual circumstances or not in the ordinary course of business, as the Commission by rules and regulations or order may conditionally or unconditionally exempt as being necessary or appropriate in the public interest or for the protection of investors or consumers.

"(b) After April 1, 1936, it shall be unlawful for any subsidiary company of any registered holding company or for any mutual service company, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to enter into or take any step in the performance of any service, sales, or construction contract by which such company under-

[4] Freeman keeps a record of the time devoted by him to holding companies in the system, other than the parent corporation.

takes to perform services or construction work for, or sell goods to, any associate company thereof except in accordance with such terms and conditions and subject to such limitations and prohibitions as the Commission by rules and regulations or order shall prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers and to insure that such contracts are performed economically and efficiently for the benefit of such associate companies at cost, fairly and equitably allocated among such companies. This provision shall not apply to such transactions as the Commission by rules and regulations or order may conditionally or unconditionally exempt as being necessary or appropriate in the public interest or for the protection of investors or consumers, if such transactions (1) are with any associate company which does not derive, directly or indirectly, any material part of its income from sources within the United States and which is not a public utility company operating within the United States, or (2) involve special or unusual circumstances or are not in the ordinary course of business."

It is the position of counsel for the public utilities division that our decision in the Ebasco Case (1940) (7 SEC 1056, 35 PUR(NS) 258, Holding Company Act Release No. 2255) is decisive of the issue here, with respect to the interlocking officers and employees.

In the Ebasco Case the six directors and principal executive officers of the holding company, Electric Bond and Share Company, occupied identical positions in the service company and were paid salaries by both the service company and the holding company. The duties, activities, and compensation of these officers were substantially similar to what they had been when the service company was merely a department of the holding company. There, as in the present case, the basis of the allocation of the salaries of the interlocking officers was suggested or approved by the particular officer involved. Among the factors said to be considered in allocating the salaries paid by the service company and the holding company were the time devoted by the particular officer to each company, the needs of each company, and the duties normally attendant upon the position of the officer. One of the service company's witnesses admitted that the allocations were "somewhat arbitrary." In the present case it was stated that the interlocking board of directors, in determining the allocation of salaries, attempts "to lean way over backwards" to the end that the parent corporation pays more than its proportionate share.

In dealing with this problem in the Ebasco Case, we said:

"The act does not deal specifically with the problem of common personnel between the registered holding company and service company. It is clear, however, that if such interlocking relations operate to defeat the purposes of § 13, the Commission must regulate or prohibit those relations. Obviously, the express mention of interlocking relations in other parts of this statute and in other statutes cannot be construed as impliedly prohibiting this Commission from administering § 13 in the light of its purposes.

"Section 13 (a) plainly evidences a congressional intent to prohibit intra-

system servicing by registered holding companies. One of the principal reasons for compelling a divorcement of holding company business from servicing business was to remove the barrier to ascertaining the cost of services which necessarily existed where holding company functions were commingled with servicing activities. This reason is set forth in the Senate Report which accompanied S. 2796, one of the bills which preceded the final act. After discussing the purpose of the proposed § 13 of the bill to institute a cost basis for intrasystem servicing, the report stated: 'The object of this section [13] is not merely to require the contracts to be performed at cost but at the same time to avoid the almost impossible and wasteful task of trying to determine what that cost is when operations are commingled with various other activities.'" (Sen. Rep. No. 621, 74th Cong. 1st Sess. [1935] 36.) The pertinent portion of the bill, to which reference is made in the above report, is similar to that of the final act.

"The language in the above report is particularly apposite. The amounts of salary of the common officers and employees allocated to Ebasco become part of its operating expenses and, therefore, enter into the 'cost' of performing services for the client associate companies. But the functions of the principal officers of Ebasco are 'commingled' with their functions as officers of Bond and Share, and it is an 'almost impossible and wasteful task' to ascertain what segment of each of the services of the common officers is for Ebasco, and hence properly included in the 'cost' to serviced companies, and what part for Bond and Share, and therefore chargeable only to it. Each of the officers in question occupies at least two positions: he is an officer of Bond and Share and an officer of Ebasco. Where his duties as an officer of Ebasco, in a particular transaction, begin, and his duties as an officer of Bond and Share end, cannot be determined. That difficulty is inherent in the situation. Bond and Share, as the parent of each of the companies serviced by Ebasco, has an abiding interest in matters pertaining to those companies. In every transaction by Ebasco in which Bond and Share is somehow interested, the officers will be acting in dual capacities —as officers of Bond and Share and as officers of Ebasco. It is unreal to assume that the value of their services to each company can be determined with any degree of accuracy. The same is equally true of the services of any employee whose work entails a commingling of holding company and service company functions.

"It is evident that effective regulation pursuant to § 13 (b) is rendered impossible so long as interlocking officers and employees are paid by both the registered holding company and the subsidiary service company. This condition can be remedied in either of two ways: (1) The officers and employees who now hold positions in both companies can sever their relations with either company; (2) Bond and Share might undertake to pay the entire compensation of the common officers and employees.[47] In either case, there would be no problem

[47] The section prohibits a registered holding company from performing any service, sales, or construction contract for associate companies. A service contract is defined in

of equitably allocating the cost between Bond and Share and Ebasco. We regard the second alternative as a step toward insuring that the standards of § 13 are met. If this step does not prove effective, we shall have to decide whether complete segregation of directors, officers, and employees between the registered holding company and subsidiary service company may not be necessary to insure economical and efficient servicing for the benefit of associate companies at cost under the act."[5]

In Re United Light & Power Service Co. (1941) 8 SEC —, 38 PUR(NS) 120, Holding Company Act Release No. 2608, we recently considered and approved an amendment filed by the declarant to adjust its organization to the standards indicated by the Ebasco Decision, *supra*. Under the terms of this amendment, the following persons were to be paid by the holding company:

(a) Persons who are directors or officers of any associate holding company.[6]

(b) Persons who regularly perform executive or administrative duties on behalf of one or more associate holding companies.

(c) All persons employed in performing accounting and auditing services, except (i) those who are engaged in performing accounting and auditing work of the service company itself, and (ii) field auditors engaged primarily in performing services for associate operating companies.

(d) Persons employed primarily in performing stock transfer services for associate holding companies.

(e) Persons who are personal assistants, secretaries, and clerks of, or stenographers, reception clerks, file clerks, telephone operators, and messengers generally engaged in performing ministerial duties for, any of the persons designated in (a), (b), (c), and (d).

This plan thus developed the approach suggested by the Ebasco decision and, for the most part, eliminated allocation of costs with respect to common officers, directors, and employees of holding companies and operating companies.

[1] Counsel for the service company has not suggested that there are any material distinguishing factors between the Ebasco Case and the case presented here. We think that the Ebasco and United Light & Power Decisions are determinative of the issue of interlocking officers, and we hold that, to achieve compliance with § 13, the common officers of the service company and the parent corporation must either sever their connection with one company or the other,[7] or be paid their entire salaries by the parent company.[8]

This problem of common officers

§ 2(a) (19), 15 USCA § 79b (a) (19) as rendering services *for a charge*. Equivalent definitions of sales and construction contracts are contained in §§ 2(a) (20) and 2(a) (21), 15 USCA § 79b (a) (20) (21)."

[5] 7 SEC at pp. 1077, 1078, 35 PUR(NS) at pp. 278–280, Holding Company Act Release No. 2255.

[6] There were two exceptions which presented special circumstances and required separate consideration.

[7] If this alternative is adopted, the severance must be bona fide and complete. Thus, any of the common officers who decide to resign from the parent corporation and remain with the service company must, in fact, confine their activities to service company work.

[8] Similar treatment must be effected in respect of the traveling expenses of the common directors, half of which are now being borne by the service company.

is further complicated in the instant case by the procedure which has been followed in respect of the immediate staffs of the five common officers. As has been pointed out, eight of the secretaries and assistant secretaries of these officers do not even keep a record of the time which they devote directly and indirectly to the holding company and their entire salaries are paid by the service company. The remaining ten assistants of the executive officers do keep time records, but the difficulty of allocating their time creates the same kind of problem as that discussed in respect of the common officers. The record does not clearly indicate all of the persons employed by the service company who act as personal assistants, secretaries, assistant secretaries, clerks, stenographers, and messengers and perform ministerial services for the five common officers. It is clear, however, that there are numerous individuals in this category and we hold that those employees who are so closely aligned with the dual functions of the interlocking officers that a fair and accurate allocation of their time is not practicable must be treated in the same way as the common officers.

[2] If the common officers sever their relations with either company and the staff remaining with the service company devotes its entire time to service company business, this problem will be eliminated. If, on the other hand, the parent company should decide to pay the salaries of the common officers, we must require that the parent company also pay the salaries of the various subordinates whose activities so closely reflect those of the interlocking officers that a fair and accurate allocation of time cannot be achieved. Cf. Re United Light & Power Service Co. *supra:*

As indicated in the Ebasco Decision, *supra,* if the second alternative suggested with reference to the payment by the holding company of the salaries of common officers and their immediate staffs does not prove to be feasible, we shall have to decide whether complete segregation of the common officers may not be necessary to insure compliance with the standards of § 13.

[3] 2. We have pointed out that in the instant case all of the stock of the service company is held by the parent corporation, and that the two companies have common executive officers and precisely the same board of directors. These and other facts in the record seem to indicate that the service company and the holding company are completely identical.

It is true that § 13 (b) permits a subsidiary of a registered holding company to operate as a service company in accordance with the rules, regulations and orders prescribed by the Commission. But it is equally true that § 13 (a) prohibits a registered holding company from acting as a service company, and we do not believe that § 13 (a) permits a holding company to act through a "subsidiary" which, as in the instant case, is completely identical with the holding company.

We need not, here, attempt to define the scope of the prohibition of § 13 (a) in this respect. Counsel has stated in his brief that "for some time there has been under consideration the election as directors of the service company of persons on the staff of the

service company and executives of the operating subsidiary companies, in which event Mr. Smith would be the only common director of both companies." Such a plan would tend to confer separate identities upon the two companies and it does not appear that there are any obstacles to its being put into effect immediately.

Our findings herein are confined to the specific issues presented in the hearing and we reserve jurisdiction to require that the service company take such further steps in the future as may be necessary to achieve the standards and policy of § 13. In particular, we have reference to various problems now under consideration in pending cases, including the application of the standards of § 13 to service company functions, the determination of whether officers and directors of the service company and of operating companies may serve as directors of the holding company, and the general question of interlocking officers of the service company, subholding companies, and operating companies.[9] We also leave open for further study and consideration the problem whether a service company may, consistently with the policy of §§ 13 (b) and (d) of the act, perform services for holding companies. We note that, in the present case, the facilities of the service company are used by the parent company and by subholding companies. It appears that these services are confined to the comptroller accounting, commission and special work, traveling auditing, Federal income tax, budget and analysis, rate, legal, and corporate reorganization divisions, and time consumed by the members of these departments is tabulated and charged, with a loading for general overhead, to the respective holding company. If it develops that this practice is not consistent with §§ 13 (b) and (d), further revision may be necessary.

We recognize that § 13 presents problems of considerable complexity and difficulty. These problems are being worked out, case by case, in an evolutionary process. As the principles and standards are developed in these cases, respondents and other service companies will, of course, have the opportunity to revise their organizations without the necessity for extensive hearings. To aid in facilitating such revision, our staff will at all times be available for consultation with respect to the requirements of § 13 as evolved in the decisions.

[4] We conclude at the present time that compliance with the standards of §§ 13 (a) and (b) requires (1) either that the officers who now hold positions in both the service company and the parent company sever their relations with one company or the other, or that the parent company undertake to pay the entire compensation of the common officers and of those of their subordinates whose activities are so closely aligned therewith that a fair and accurate allocation is not practicable; (2) that the service company cease to pay traveling expenses of any common directors; and (3) that

[9] From the record it appears that various officers and directors of the service company here serve as officers or directors of various associate companies, both operating and subholding. In all cases the associate company pays, at most, a nominal salary. This issue has not been argued in the present proceeding and we will reserve for future consideration the question of the effect of this situation in the light of the standards of § 13.

steps be taken to revise the directorate of the service company.

We will defer the issuance of a final order for a period of sixty days from the date of this opinion, during which time the service company and parent corporation may take steps to revise the organization of the service company in accordance with the views expressed herein. If within that time compliance is effected, an appropriate order will issue; otherwise we must set aside our order of July 31, 1936, 1 SEC 606, approving the organization as a subsidiary service company of Middle West Service Company.

TENNESSEE RAILROAD AND PUBLIC UTILITIES COMMISSION

Re Nashville Water Company

[Docket No. 2400.]

Consolidation, merger, and sale, § 13 — Necessity of approval of contract.

1. A contract by a public utility corporation to sell its property to another utility, or to anyone other than a nonutility, as defined by Chap. 42 of the Public Acts of 1935, is not valid until approved by the Commission, although a transfer of property to a municipality does not have to be approved, p. 285.

Security issues, § 99 — Debt ratio — Water companies.

2. The interest of the public is so vitally connected with the operation of a water utility that such a utility should have at least 25 per cent of equity and not to exceed 75 per cent of bonded indebtedness on its property, p. 286.

Security issues, § 58 — For property acquisitions — Adequacy of equity.

3. A utility should not be allowed to issue bonds which obligate the utility's equity on a property in which the amount of the utility's equity is not definitely ascertainable, in order for the utility to purchase a separate and distinct property in a separate and distinct community in which property to be purchased the utility will have no equity, and this is particularly true where the margin of equity in the first property owned by the utility is very close, p. 286.

Security issues, § 49 — Bonding the equity — Necessary improvements.

4. A public utility should not be allowed to bond its equity in its property in an amount which might prevent the use of the equity to borrow funds sufficient to put its property in proper condition, where large expenditures are necessary in order to put the property in condition to render adequate service to its customers, p. 286.

Return, § 22 — Regulatory policy.

Discussion of the regulatory policy of protecting the consumer from exploitation and of permitting rates sufficient to permit a public utility to obtain a return which will induce the flow of necessary resources, financial and human, for rendering the service, p. 287.

TENNESSEE RAILROAD AND PUBLIC UTILITIES COMMISSION

Return, § 6 — Basis — Effect of capital recovery.

Discussion of the rate base of a public utility company which has acquired facilities for a mere fraction of estimates of value because of their construction by nonutility entrepreneurs in real estate developments and speculation, p. 287.

(JOUROLMON, Commissioner, concurs in separate opinion.)

[March 31, 1941.]

PETITION *by water company for permission to purchase certain properties and to borrow money and to issue bonds for money so borrowed; petition denied and company ordered to present plans for improving present system.*

By the COMMISSION: This matter came on to be heard on the 24th day of February, 1941, upon the petition of the Nashville Water Company, Incorporated, seeking permission to buy the waterworks and distribution systems in and around Columbia, Maury county, Tennessee; in and around Winchester, Franklin county, Tennessee; and in and around Cowan, Franklin county, Tennessee, from the Tennessee Utilities Corporation. The petition set up that the petitioner had agreed to purchase the three aforementioned properties for the sum of $435,000; that there would be required $60,000 to improve the existing system in Columbia, Tennessee; that if the purchase was approved the company would need $10,000 working capital and it would need an additional sum of $60,000 to discharge the lien on the Davidson county properties of the petitioner; that the petitioner company had obtained from the Northwestern Mutual Life Insurance Company a firm commitment for the purchase of $565,000 of 25-year first mortgage sinking-fund bonds to be secured by a deed of trust on the Nashville property, Columbia property, Winchester property, and Cowan property; said bonds bearing 3¾ per cent interest. The petition asked for the Commission's approval of the issuance of $565,000 worth of bonds to be sold to the Northwestern Mutual Life Insurance Company. During the hearing it developed that the city of Winchester and the city of Cowan had not consented to the transfer of the property. Therefore, the petition was amended to exclude them and the amount of bonds in question to be issued was reduced to $500,000. It also developed that all of the property of the Tennessee Utilities Corporation, including approximately eleven water properties and seven ice properties, was sold by said Utilities Corporation to a syndicate composed of the Equitable Securities Corporation and the Cumberland Securities Corporation for the sum of $870,000. Under the contract, which was filed upon the Commission's insistence, the Tennessee Utilities Corporation agreed to convey to various nominees to be named by the said seller, the different pieces of property to be sold, and the price to be paid by the seller. One of the properties, Shelbyville Water property, was sold prior to the hearing to the city of Shelbyville, Tennessee.

[1] The transfer or sale of utility property to a municipality does not have to be approved by the Commission (Chap. 42 of the Public Acts of 1935), but the sale or transfer of property by a utility to another utility or to anyone other than a nonutility, as defined by the above chapter of the Public Acts of 1935, must be approved by this Commission. The aforesaid contract between the Tennessee Utilities Corporation and the syndicate named, in so far as it seeks to transfer utility property, is not valid until approved by this Commission, and it has not been so approved.

The city of Columbia, through its representatives, appeared at the hearing and the city's position was that it had consented by proper resolution to the transfer of the property from the Tennessee Utilities Corporation to Nashville Water Company. It was interested in the Commission's determination that the Nashville Water Company, if it were allowed to operate the property, should have a sufficient equity with sufficient funds to make any necessary extensions or improvements, so that city of Columbia and its citizens would be protected.

The Nashville Water Company was formed for the purpose of buying a number of pipe lines lying principally in the seventh district of Davidson county, in and around Belle Meade, these pipe lines having been built in connection with real estate developments. The company owned and operated the pipe lines for some time and did not submit to the Utilities Commission's jurisdiction until the decision of the supreme court in the case of Nashville Water Co. v. Dunlap, decided on the 6th day of April, 1940, — Tenn —, 34 PUR(NS) 404, 138 SW(2d) 424. Prior to January 1, 1941, the company operated the lines but water was sold through the lines by the city of Nashville, to whose systems the lines were connected, and the city collected for the water. On January 1, 1941, pursuant to a contract entered into between the Nashville Water Company and the city of Nashville, the company began selling water purchased from the city of Nashville, delivered to the company at the city limits, and redistributed by it to more than 3,000 customers. The company has, therefore, only operated in its present status since the beginning of 1941. The testimony shows that the company has invested approximately $127,000 for the purchase of the various lines that make up this system. At present it is indebted to the American National Bank in the amount of $60,000, borrowed from said bank. The company's principal source of revenue was from the sale of taps or tapping privileges. The lines were purchased by the present company and in excess of $50,000 worth of these tapping privileges have been sold by it. On a large number of the lines purchased by the company the owners who sold them retained tapping privileges in the line. The extent of these privileges retained are not fully known by the company.

Representatives of the company estimate that the cost of replacing the present lines would exceed $600,000. Estimates are also made as to the amount of the depreciation. During the course of the hearing it was developed that a sizeable expenditure would have to be made in order to interconnect a number of the lines and

in order to put the system in Davidson county in a position where adequate pressure and service would be rendered. It was conceded by the company that a number of improvements would have to be made but the company did not have any plan for the inauguration of these necessary improvements. The improvements necessary to provide a minimum of adequacy as estimated was from $50,000 to $60,000. That this expenditure is necessary on the Davidson county system immediately and before the summer season, in order that the customers of the company can have proper service, cannot be doubted.

Engineering testimony was presented as to the value of the Columbia system and also as to the need of improvement on said system. These improvements were estimated at $60,000. If the proposed bond issue were approved the company proposed that it would get this amount of money and make the improvements immediately. During the course of the hearing the company proposed to put into effect a rate cut over the existing rate in Columbia, which would effect a $4,000 saving to the customers per year.

[2] The Commission is of the opinion that the interest of the public is so vitally connected with the operation of a water utility that each utility should have at least 25 per cent of equity and not to exceed seventy-five per cent of bonded indebtedness on its property, and these are only the minimum requirements. These requirements are in accordance with sound utility practice and to allow the bonding of property for a sum in excess of that above mentioned would not be considered by the Commission to be in the public interest.

[3] The Commisson is further of the opinion that utilities should not be allowed to issue bonds, which obligate the utility's equity on a property in which the amount of the utility's equity is not definitely ascertainable, in order for the utility to purchase a separate and distinct property in a separate and distinct community in which property to be purchased the utility will have no equity, and this is particularly true where the margin of equity in the first property owned by the utility is very close.

[4] The Commission is further of the opinion that where large expenditures are necessary in order to put a utility property in condition to render adequate service to its customers, as is the case in this utility's property in Davidson county, that this utility should not be allowed to bond its equity in this property in an amount which might prevent the use of this equity by the company to borrow funds sufficient to put its property in proper condition, and that for the Commission to allow it to issue bonds under such circumstances would not be in the public interest.

The record indicates that the Nashville Water Company has in addition to its present outstanding liens in the amount of $60,000, approximately 62,600 shares of common stock of par value of $10 per share, but such common stock was issued in exchange for property, and was not paid in capital except in one instance, and the record indicates that the amount of cash actually paid in was only approximately 13 per cent of the amount of stock issued.

Since the company's equity in the Nashville property has not been ascertained and is not readily ascertainable; and since approval by the Commission might prevent the company from obtaining funds to make the necessary expenditures on the Nashville property, the Commission is of the opinion that the company's equity in the Nashville property is not sufficient to justify the issuance of bonds in the amount and for the purposes requested, and does not consider the proposal of the company for the issuance of such bonds to be sound financing.

It is therefore *ordered* by the Commission:

1. That the petition requesting the approval of the purchase of the Columbia Water system by the Nashville Water Company be, and the same is hereby, denied.

2. That the petition requesting the Commission's approval of the issuance of bonds in the amount of $500,000 be, and the same is hereby, denied.

3. That the company prepare and present to the Commission within a reasonable time, not to exceed thirty days, a plan for the Commission's approval setting out what the company proposes to do in order to improve the Davidson county system so that adequate and proper service can be rendered by the company to its customers in Davidson county.

The Commission will retain jurisdiction in this matter for such other and further orders as it may from time to time deem necessary.

JOUROLMON, Commissioner, concurring: The existence of the Railroad and Public Utilities Commission is chiefly justified by its effectiveness in preventing the unjust enrichment of the operators of utility services at the expense of the users of those services. Regulation in this state is similar to that in other states of the Union, which has universally been instituted with the primary purpose of protecting the consumer from exploitation by those from whom he is obliged to obtain the essential utility services. Under our system of private enterprise, Commissions are justified in allowing utilities rates sufficient to permit the latter to obtain a return which will induce the flow to them of the necessary resources, financial and human, for rendering the service. But in the instant case the facilities needed to enable the utility to render such service were obtained for a mere fraction of solemn estimates of their value, because, forsooth, the properties were actually constructed by nonutility entrepreneurs in order to enable them to obtain benefits from real estate development and speculation. Having obtained these benefits, they then disposed of the remainder of the properties, including the water pipe lines, for a small percentage of the original cost, and the utility service has become, as it were, a mere by-product of a real estate boom. Thus the basic reason for permitting a return on the full amount of the original expenditure, a large part of which has been recovered from capital contributed for other purposes, becomes an academic consideration. The rate base, on which the utility is entitled to earn a reasonable return, cannot be founded on the original cost or the reproduction cost new less depreciation alone, but the

other controlling factors are entitled to greater weight.

If the Commission were to permit the issuance of heavy overriding bodies of securities, all of which would become an obligation of the company to be paid for out of charges to the consuming public, control over rates would be vitiated and lost and the tendency would be to bring about excessive returns for the company in order to pay the large interest and dividend burdens. Only by denying such applications as in the instant case can unjust enrichment of the operators at the expense of the consuming public be prevented.

I wholeheartedly agree with the action of the Commission in denying its approval of the issuance of bonds in the present case. This view of the case is based upon the considerations stated above. I have formerly stated that it is in the public interest to require public utilities to have a substantial equity in their properties. Re Tennessee Electric Power Co. (1937) 20 PUR(NS) 17, 40–42. In such a company as the petitioner, bonded indebtedness should not exceed 50 per cent of the prudent investment in its property. I do not agree that minimal requirements of 25 per cent equity and 75 per cent bonded indebtedness stated by way of dictum in the order should be established, as it appears that these proportions are wholly out of line when applied to the specific facts shown in the present case.

CALIFORNIA RAILROAD COMMISSION

Re T. E. Brown, Doing Business As Woodland Warehouses

[Decision No. 34016, Application No. 24031.]

Security issues, § 42 — Necessity of Commission authorization — Indebtedness for nonutility purposes — Deed of trust.

Commission authorization should be obtained for execution of a deed of trust which subjects utility properties to the lien thereof, as well as for the issuance of a note designed in part to renew indebtedness incurred for the purchase of utility properties, although a large portion of an indebtedness represents moneys borrowed for nonutility purposes.

[March 18, 1941.]

APPLICATION *for permission to execute note and deed of trust on public utility property; granted.*

By the COMMISSION: This is an application by T. E. Brown for an order authorizing the execution of a deed of trust and the issue of a note.

T. E. Brown, operating under the firm name and style of Woodland Warehouses, is engaged in the public utility warehouse business in Woodland, primarily for the storage of grain and rice, and in certain nonutility activities. His financial statement attached to his petition shows his assets and liabilities as of June 30, 1940, as follows:

Assets	
Land, buildings, and equipment ..	$90,327.17
Other investments	4,836.54
Cash on hand and in bank	4,108.94
Accounts receivable	6,843.75
Accrued storage	12,142.79
Merchandise	803.40
Prepaid interest	73.86
Total assets	$119,136.45
Liabilities	
Mortgages or liens on real estate	$10,773.24
Notes payable	4,862.48
Accounts payable	33.73
Other liabilities	40.66
Deferred credits	3,000.00
Net worth	100,426.34
Total liabilities	$119,136.45

Applicant at one time was engaged in business with one Dennis Collins. During 1935, pursuant to authority granted by the Commission by Decision No. 27806, dated March 11, 1935, he acquired the interest of Dennis Collins in the properties he now operates, and issued a promissory note in the amount of $11,689.81, and assumed the payment of certain indebtedness, reported at that time in the amount of $17,966.

The present application shows that during 1940 the note to Dennis Collins had been reduced to $2,839.81, the indebtedness assumed to $8,362.46, and that applicant made arrangements with the Capital National Bank of Sacramento to consolidate the unpaid balances into one loan. On or about the same time, he arranged to borrow from the same bank the additional sum of $20,000 to finance the cost of a rice drying plant. Such sum and the unpaid balances due on the utility loans issued or assumed, as aforesaid, were consolidated into one note for $30,000, dated as of July 22, 1940. The note is payable at the rate of $500 per month with interest at the rate of 6 per cent per annum. The whole of said principal sum and interest is payable on July 22, 1942. The payment of the note is secured by a deed of trust upon all of applicant's real property, including the property used in his public utility operations.

The Commission did not authorize the execution of the deed of trust and the note dated July 22, 1940. Although a larger portion of the indebtedness represents moneys borrowed for nonutility purposes, the deed of trust securing its payment includes public utility properties among those proposed to be subjected to the lien thereof, and the note was designed, in part, to renew indebtedness incurred for the purchase of public utility properties. It is our opinion, therefore, that applicant should have received the authorization of this Commission before he attempted to place the lien on the public utility warehouse properties or to issue the long-term note.

However, it clearly appears that applicant's failure to obtain such authorization was through inadvertence and with no intent to evade the provisions of the Public Utilities Act. When his attention was called to the provisions of the act, he forthwith filed the present application.

The Commission has considered this matter and is of the opinion that

a public hearing is not necessary, and that the request of applicant should be granted, as herein provided, therefore,

It is hereby *ordered* that T. E. Brown be, and he hereby is, authorized to execute a deed of trust and to issue a note in the principal amount of $30,000 for the purpose of renewing outstanding indebtedness and of financing the cost of additional property, such deed of trust and note to be in, or substantially in, the same form as the deed of trust and note filed in this proceeding.

It is hereby *further ordered* that the authority herein granted to execute a deed of trust and to issue a note is for the purpose of this proceeding only and is granted only in so far as this Commission has jurisdiction under the terms of the Public Utilities Act and is not intended as an approval of said deed of trust and note as to such other legal requirements to which they may be subject.

It is hereby *further ordered* that the authority herein granted will become effective when applicant has paid the fee prescribed by § 57 of the Public Utilities Act, which fee is $28.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re Butler Railways Company

[Application Docket No. 59908.]

Street railways, § 8 — Powers of municipalities — Contracts.

A city council has authority to enter into an agreement with a street railway company providing that upon abandonment of the street railway service all tracks, wires, poles, and overhead structures on the city streets shall become the property of the city in consideration of its release of the railway company from all claims arising from the removal of such structures and the repairing of the streets.

[March 26, 1941.]

APPLICATION *for approval of dissolution of street railway company and the abandonment of its service and facilities and of an agreement between the company and municipality; granted.*

By the COMMISSION: An agreement dated November 19, 1940, between Butler Railways Company and the city of Butler, filed with the Commission on November 27, 1940, provides that upon abandonment of street railway service by Butler Railways Company all tracks, wires, poles, and overhead structures on paved city streets become the property of the city of Butler in consideration of the city's release of the Railways Company from all claims now pending or which may be caused or may arise "from the

removal of the above-mentioned structures and the repairing of the paved streets."

Under date of December 17, 1940, the Commission instituted adverse proceedings to determine the reasonableness, legality, or any other matters affecting the validity of the contract.

On November 13, 1940, the Butler Railways Company filed its application at A. 59908, for a certificate of public convenience evidencing our approval of the dissolution of said company. At the hearing the application was amended so as to include a certificate of public convenience to cover complete abandonment of street railway service.

After due notice a hearing was held on Friday, February 28, 1941, at 10 A. M., in the courthouse at Butler, at which appearances were entered for counsel of the Butler Railways Company, the solicitor for the city of Butler, and counsel for unnamed protesting taxpayers. The two proceedings were consolidated for the purpose of hearing.

On October 16, 1940, at A. 58709, Folder No. 2, we granted a certificate of public convenience to the Butler Motor Transit Company evidencing our approval of the right of said company to operate motor vehicles for the transportation of persons and packages, as a common carrier, on scheduled routes between points in the city of Butler and vicinity, Butler county, via designated routes, subject to the following, inter alia, conditions:

"(a) That the rights, powers, and privileges herein granted to furnish bus transportation, shall become effective only upon the discontinuance of street railway service by Butler Railways Company.

"(b) That the rights, powers, and privileges herein granted to furnish bus transportation shall be conditional upon the inauguration of bus operation over all the routes hereinbefore described, on or before December 15, 1940." (By order dated November 27, 1940, we extended the time for the inauguration of bus service to February 15, 1941.)

The testimony shows that street car service was totally abandoned by the Butler Railways Company about noon on the 30th day of January, 1941.

Testimony further shows that the assets of the Butler Railways Company are as follows: $304.11 cash in bank; $18,000 received from the sale of tracks, wires, poles, and other structures beyond the limits of the city of Butler; one lot in the city of Butler, valued at $1,000, and a tract of land known as Alameda Park, valued at $20,000, or a total of $39,304.11.

The testimony also shows that the liabilities of the Butler Railways Company are as follows: bonds outstanding $250,000, with interest accrued thereon $109,788.53; West Penn Power Company for electric current, $22,917, Social Security Tax, approximately $200.

However, if the agreement of November 19, 1940, is not permitted to become effective, there will be added to the assets the sum of $14,250, being the estimated salvage value of tracks, poles, wires, and overhead structures in the city of Butler, and to the liabilities there will be added the sum of $37,511.46, due to the city by virtue of a franchise agreement, plus the cost

of the removal of tracks and facilities and repaving the track area.

The city clerk testified that a franchise agreement was entered into between the city and Railways Company on January 23, 1925, effective January 1, 1925, whereby the Railways Company was obligated to pay to the city the sum of $3,000 per year at the rate of $250 per month, and that from 1930 to the date of the hearing, Railways Company had made five payments of $250 or a total of $1,250. He further testified that there was due to the city from Railways Company the sum of $2,761.46 from an account designated as a material account.

It appears that the estimated cost of the removal of track and facilities and repaving the track area is $55,000. Allowing an estimated credit of $14,250 for salvage, the net estimated cost is $40,750. This is more than the total assets of Railways Company.

From the foregoing, it appears that under the terms of the franchise agreement and the company's obligation to remove its track and facilities and repave the track area, the company's obligations to the city are as follows:

Payment due city under terms of agreement of January 23, 1925 ..	$34,750.00
Material account	2,761.46
Total	$37,511.46
Net estimated cost of repaving track area	40,750.00
Total obligation of company to city	$78,261.46
Net assets of Railways Company ..	39,304.11
Net unsecured liability	$38,957.35

The city engineer testified that after the agreement of November 19, 1940, was entered into, the city has entered into negotiations to secure a WPA project for the removal of the tracks, wires, poles, etc., from the streets and the repaving of the entire width of the streets including the portion presently occupied by the track at an estimated cost of $142,000, of which the city's share is $35,000, less the salvage value of the tracks and facilities of $14,250, or a net cost to the city of $20,750. Witness further testified that one of the requisites of securing such a project is the ownership by the city of the trackage and line and, further, that upon receipt of an order approving the dissolution of the Railways Company, the project will be approved.

Witness further testified that he had made a study of the situation with respect to the tracks in the streets as exists in Butler as well as similar situations in other cities, and from those studies it is his opinion that the agreement of November 19, 1940, is for the best interests of the city.

A member of the city council, in charge of streets, testified that at the time he signed the agreement of November 19, 1940, he knew that such an agreement would release the Railways Company from all its franchise obligations in consideration of the transfer to the city of all tracks, wires, and overhead structures by Railways Company, located in the city, and in his opinion such agreement would be to the best interest of the city.

At the present time all of the assets of Railways Company have not been reduced to cash, and it may be some time before that is accomplished, because a considerable part is real estate. Meanwhile some, if not all, the tracks will remain in the streets and will be a greater hazard to the travel-

ing public than they now are (protestants admit that the tracks in the streets are dangerous) unless the streets are properly maintained. The cost of such maintenance would of course be on the city.

It is apparent, from the fact that said agreement was signed by all members of the city council and the mayor, that, in their opinion, the agreement is for the best interest of the city. While that opinion is not binding upon us, it is entitled to respectful consideration and should not be overruled except for weighty reasons.

The record indicates that the financial condition of Butler Railways Company is not such as to permit it to discharge its franchise and other financial obligations. It appears from the record that if we require Railways Company to remove rails, ties, and overhead structures, and repave at its own expense, the proportionate share of the city under a WPA project, to pave the other portions of the streets would be more than the city's net proportionate share of the contemplated WPA project, if the agreement of November 19, 1940, is permitted to become effective. Furthermore, it appears that the contemplated WPA project will be to the best interest of the city, and as this plan is predicated upon the city-ownership of the trackage and our approval of the abandonment of street railway service and the dissolution of Railways Company, we shall approve the abandonment of street car service and the dissolution of the Railways Company.

Counsel for the protestant taxpayers contended that the city council has no authority to enter into such an agreement. There is no merit to that contention. In West Penn R. Co. v. Public Utility Commission (1939) 135 Pa Super Ct 89, 101, 102, 29 PUR(NS) 22, 30, 4 A(2d) 545, the court said:

"Section 1910, Art. 19, of the Act of June 23, 1931, P.L. 932, 53 PS 12198–1910, authorizes any city of the third class (city of McKeesport) to enter into an agreement with a street railway company 'affecting, fixing, and regulating the franchises, powers, duties, and liabilities of such companies, and the regulations and respective rights of the contracting parties,' and to 'provide for payments by the companies to the city in lieu of the performance of certain duties or the payment of license fees or charges imposed in favor of such city, by the charters of the respective companies, or by any general law or ordinance. . . .' Such contracts, however, are 'subject to the provisions of the Public Service Company Law.' The contract between appellant and the city of McKeesport was legal and was within the power of the city to make, subject to the Commission's approval."

After full consideration of the matters and things involved, we are of the opinion and find that approval of the application of Butler Railways Company for dissolution, and the abandonment of street railway service, is necessary or proper for the service, accommodation, convenience, or safety of the public, and further find that the agreement between Butler Railways Company and the city of Butler, dated November 19, 1940, should be approved.

CALIFORNIA RAILROAD COMMISSION

Re Pacific Gas & Electric Company

[Decision No. 33946, Application No. 21744.]

Franchises, § 5 — Approval of rights — Protection of existing service.

1. The Commission, in granting a certificate to exercise a franchise, attempts to provide some safeguard against uncontrolled utility competition, whether the competition be a possible invasion of one utility into the field occupied by another of like character, or the area invaded be served by a nonutility corporation, p. 295.

Franchises, § 5 — Approval of rights — Protection of existing service.

2. The Commission will not limit a certificate to exercise a franchise so as to foreclose the utility from making ordinary service extensions within the area it has undertaken to serve, when the utility, upon applying for the certificate, has declared its intention not to make any extension in competition with existing services, and if another utility should assert and possess a similar right, the Commission has power to restrict further utility extensions should the necessity for such limitation then appear, p. 295.

Franchises, § 6 — Exercise of rights — Limitations on grant.

Statement in dissenting opinion that if the purpose of § 50(b) of the Public Utilities Act is to authorize the Commission to grant certificates to exercise franchises to operate, granted by counties, it has no application in a proceeding seeking a certificate to exercise a franchise, because counties have no authority to grant franchises to operate, their authority being limited to the narrower grant of a right to use the highways in operating, p. 303.

Franchises, § 5 — Exercise of rights — Questions involved.

Statement in dissenting opinion that if the intent of § 50(b) of the Public Utilities Act was that the Commission should only certificate the rights granted by counties to use the roads, consideration of operative rights would not be involved in a proceeding seeking a certificate to exercise a franchise, and no limitations on the right to operate under the order granting the certificate would be involved, p. 303.

Franchises, § 5 — Commission approval — Limitations on grants.

Statement in dissenting opinion that if under § 50 (b) of the Public Utilities Act the Commission may authorize an electric company to operate (distinguished from approving a county's grant of a right to operate) proper territorial and other limitations should be included in an order granting a certificate, p. 303.

Franchises, § 5 — Terms of grant.

Discussion in dissenting opinion of whether an order made it clear whether the Commission was granting a certificate to operate or only a certificate approving applicant's use of roads, where it has or hereafter obtains a right to operate, p. 303.

Certificates of convenience and necessity, § 169 — Exercise of rights — Terms of grant.

Discussion, in dissenting opinion, of whether or not a finding should be made that public convenience and necessity require that an electric company have a certificate to operate in all parts of a county where the utility operates in less than one-third of the county, when there is no showing of any plan to enlarge operations, and the evidence shows that part of the county not served by the company is being served by other utilities and one municipal operation, p. 304.

Franchises, § 5 — Approval — Extension of operation.

Discussion, in dissenting opinion, of the problem of giving an applicant for a certificate to exercise a franchise such authority as it may require from time to time to make such extensions as are made in the ordinary course of business to serve new customers, and to improve service to existing customers without seeking Commission authority for such extension, p. 304.

Monopoly and competition, § 78 — Authority to compete with public agencies.

Statement, in dissenting opinion, that the fact that the Commission does not, under existing law, have the authority to regulate the activities of public agencies, does not indicate that an electric company should be given blanket authority to compete as it sees fit with such agencies, p. 307.

(WAKEFIELD and HAVENNER, Commissioners, dissent.)

[February 25, 1941.]

APPLICATION *for certificate to exercise the right, privilege, and franchise granted by ordinance; granted in part.*

By the COMMISSION: Pacific Gas and Electric Company seeks a modification of the order contained in our Decision No. 32751 of January 23, 1940, which order granted a certificate for the partial exercise of the electric franchise obtained from the county of Mendocino.

The substance of the plea advanced for an amendment of that order is that the Commission has unnecessarily restricted applicant's future service areas to those portions of the county within which extensions of its existing electric system may be made in the ordinary course of business as permitted by any applicable extension rule approved by the Commission, provided that no other utility or political body may at the time be rendering a similar service. Applicant points out that it has stipulated not to invade any area now being served by other utilities or municipal corporations, and asserts that by § 50(a) of the Public Utilities Act it is accorded the right to make extensions into areas contiguous to its present system as long as it does not invade the territory served by other public utilities of like character.

[1, 2] Upon reconsideration of the matter, we are of the opinion that some modifications of the order first issued are appropriate and desirable. It has ever been the object of the Commission to provide some safeguard against uncontrolled competition, whether the competition be a possible invasion of one utility into the field occupied by another of like char-

acter, or the area invaded be served by a nonutility corporation. But when the possibility of such future conflict is largely removed by the applicant's declared intention not to make any extension in competition with existing services, it has never been the practice of the Commission, nor does the necessity now appear, to so limit the certificate granted as to foreclose the utility from making ordinary service extensions within the area it has undertaken to serve. Should another assert and possess a similar right, such conflicts may be dealt with by the Commission under its reserved power to restrict further utility extensions should the necessity for such limitation then appear.

We are of the opinion that the original order made in this proceeding should be amended.

ORDER

The petition of Pacific Gas and Electric Company for a modification of the Commission's Decision No. 32751 having been fully considered, and good cause appearing, it is hereby *ordered* that the order contained in said decision be and hereby is amended to read as follows:

It appearing, and being found as a fact that public convenience and necessity so require, Pacific Gas and Electric Company is hereby granted a certificate to exercise the rights and privileges granted by the county of Mendocino by Ordinance No. 258 adopted December 16, 1936, to the extent that Pacific Gas and Electric Company may exercise said rights and privileges within such parts or portions of said county as are now served by it or as hereafter may be served by it through extensions of its existing system made in the ordinary course of business as contemplated by § 50(a) of the Public Utilities Act; provided, however, that this certificate shall be subject to the stipulation given by Pacific Gas and Electric Company that, except upon further authority of this Commission first obtained, it will not exercise such franchise for the purpose of furnishing or supplying electricity in those parts or portions of said county now being served by Central Mendocino County Power Company, the city of Ukiah, California Public Service Company, Benbow Power Company, Pt. Arena Electric Light and Power Company, or E. N. Frost, and subject also to the condition that the Railroad Commission may hereafter by appropriate proceeding and order limit the authority herein granted as to any territory within said county not then being served by Pacific Gas and Electric Company. It is provided further that no claim of value for such franchise or the authority herein granted in excess of the actual cost thereof shall ever be made by grantee, its successors or assigns, before this Commission or before any court or other public body.

The authority herein granted shall become effective on the date hereof.

WAKEFIELD, Commissioner, dissenting: I dissent from the foregoing supplemental order.

I believe Decision No. 32751 should be amended to include a direct finding of public convenience and necessity, in so far as public convenience and necessity can be found, for the exercise of whatever rights are granted by the decision. I feel that Deci-

sion No. 32751 should otherwise remain in effect as issued, except to enlarge the meaning of the phrase "political body" as hereinafter pointed out, and to clarify the question of whether operating rights are being granted.

I differ from the foregoing prevailing opinion and the supplemental order based thereon, in the following particulars:

1. It is not clear therefrom whether operating rights or only rights to use the highways are being dealt with. Other orders of the Commission granting certificates where city or county franchises were involved have not been clear on this point but the issue has now been raised as to what sort of certificate is being granted and, being raised, it should be decided. If in this proceeding the Commission is not dealing with operating rights, and if no right to operate an electric system is being granted by the foregoing supplemental order, the Commission should say so. Otherwise, the Commission puts it in the power of the applicant to construe an order which only grants the right to exercise a franchise to use the highways as an order granting operating rights, and to represent to the interested investment officials in other states that it has rights to "operate" in areas where it does not actually possess them.

2. There should be a greater limitation on where the applicant may operate, if operating rights are being granted. The limitation contained in the foregoing supplemental order, that the applicant shall abide by its stipulation, voluntarily given, that it will not compete with existing utilities or the city of Ukiah in territory "*now being served*" by such other agencies, is not sufficient to protect against competition where the others *may be serving* (outside of the area now being served) when the applicant desires to start competition.

It has been suggested that this latter objection can be fully met by a general order of the Commission applying to all utilities and adopting appropriate rules governing extensions. I think that may be true and I shall favor the adoption of such a general order adequately meeting the problem herein involved. However, such an order is not now before us; we do not know what terms the Commission can agree on for such a general order; and I do not believe the Commission should grant the authority which it does in the foregoing supplemental order to this applicant at this time without greater limitation.

3. The conclusion that public convenience and necessity require the exercise of the franchise on a county-wide basis is factually inaccurate unless the limitations I propose are adopted. Public convenience and necessity do not now require that the applicant serve the whole county; there is little possibility that they will ever require it; and certainly public convenience and necessity do not require that applicant be given authority *now* which may permit it to extend its service at some time *in the future* into an area then being adequately served by another agency.

In view of my conclusions and the importance of this matter, a discussion of the proceeding and what is involved therein is desirable.

Pacific Gas and Electric Company has filed a petition for amendment

and modification of the order of the Commission rendered in Decision No. 32751 on January 23, 1940, in this proceeding. This decision grants to applicant a certificate of public convenience and necessity to exercise in part a franchise granted by the board of supervisors of Mendocino county.

Applicant requests amendment in the order to include a direct finding of public convenience and necessity. Such a direct finding was not made in Decision No. 32751, although the Commission therein "ordered that a certificate of public convenience be and hereby is made and granted to Pacific Gas and Electric Company." This request should be granted, as is done in the foregoing order, though I cannot agree that public convenience and necessity was established to the extent found under one of the possible interpretations of the order hereafter discussed.

Applicant's further request for modification arises out of the fact that the certificate to exercise the franchise was granted only in part and subject to certain limitations. The foregoing supplemental order, while not eliminating all restrictions, does modify them in the applicant's favor.

The franchise in question was granted by Ordinance No. 258 of the board of supervisors of Mendocino county, the granting portion of which is as follows (being all of § 1 of said ordinance):

"Section 1. The right, privilege, and franchise of erecting, constructing, and maintaining electric lines consisting of poles or other suitable structures and wires, crossarms, and other appliances installed thereon, including wires for the private telephone and telegraph purposes of the grantee, in so many and in such parts of the public highways, streets, roads, and places of said county of Mendocino as the grantee of said right, privilege, and franchise may from time to time elect to use for the purposes hereinafter specified, and of using such electric lines for the purpose of transmitting, conveying, distributing, and supplying electricity to the public for light, heat, power, and all lawful purposes, are hereby granted by said county of Mendocino for the term of fifty years from and after the time when this ordinance shall take effect, to Pacific Gas and Electric Company, its successors and assigns."

Applicant now serves electricity in Mendocino county. Its operations are confined to approximately the southerly one-third of the county. Its most northerly point of operation is the Potter Valley powerhouse west of Willits, from which a 60,000-volt transmission line runs southerly near the easterly line of the county through Hopland and into Sonoma county on the south. Various distribution lines lead from this transmission line confined mostly to the easterly part of the southerly one-third of the county, except one line which extends from near Ukiah westerly through or near Booneville to Navarro. The areas operated are around Potter Valley, Ukiah, Hopland, Booneville, and Navarro, including the first and the latter three unincorporated towns. The instant franchise would not apply to the service within the city of Ukiah, which is incorporated. The city of Ukiah has a municipal system which serves that community, but

the applicant has resale customers therein, including the city of Ukiah.

Other privately owned utilities operating in the county are Central Mendocino County Power Company, operating in and around Willits (since the hearing in this matter this operation has been acquired by California Public Service Company); Point Arena Electric Light and Power Company, operating in the area in and around Point Arena on the coast near the southerly boundary of the county and the area in and around Covelo in the northeastern part of the county; California Public Service Company operating in the area in and around Fort Bragg and the town of Mendocino, both on the coast; Long Valley Light and Power Company, serving the area in and around Laytonville; the Benbow Power Company in the extreme northerly portion of the county and whose operations also extend into Humboldt county on the north.

Applicant holds various Mendocino county franchises at the present time. The first covers the area formerly known as the town of Potter Valley which has since been disincorporated. This franchise known as Ordinance No. 40 expires on July 20, 1957.

The second franchise, known as Ordinance No. 151, was granted to Snow Mountain Water and Power Company and expires on June 21, 1956.

The third franchise is a general county franchise (Ordinance No. 183 of the board of supervisors of Mendocino county) and runs until October 6, 1961.

The fourth was granted originally to California Telephone and Light Company, is known as Ordinance No. 200 and expires March 30, 1964.

The fifth was originally granted to Snow Mountain Water and Power Company, is known as Ordinance No. 224, and expires September 14, 1977.

All of these franchises except that granted by Ordinance No. 183 cover less territory than the entire county. The record is not clear as to what portion of the county each covers, other than that granted by the former town of Potter Valley. There is nothing in the record to indicate and applicant does not contend it does not have ample authority to maintain its present operations in the county and any presently contemplated extensions thereof. Applicant does allege that it is desirable to extend the term of its franchise rights in this county to a date past 1961, the date of the franchise granted under Ordinance No. 183. In this connection, it states in its application herein:

"That while applicant is in possession and ownership of valid franchises of erecting, constructing, and maintaining electric lines in the public highways, streets, roads, and places of said county of Mendocino, and of using such electric lines for the purpose of transmitting, conveying, distributing, and supplying electricity to the public for light, heat, power, and all lawful purposes it applied for and obtained the franchise granted by said Ordinance No. 258 of the board of supervisors of the county of Mendocino primarily to enable applicant to continue to qualify its first and refunding mortgage bonds as legal investments for savings banks and trust funds; that the laws of a number of the states of the United States permit, under

definite restrictions, the investment of savings banks and trust funds in public utility securities; that the laws of the state of New York, as an example, permit investments by savings banks in the bonds of gas and electric corporations provided, among other things, that 'such corporation shall have all franchises necessary to operate in territory in which at least 75 per centum of its gross income is earned, which franchise shall either be indeterminate permits or agreements with, or subject to the jurisdiction of a Public Service Commission or other duly constituted regulatory body, or shall extend at least five years beyond the maturity of such bonds . . .' that the statutes of other states, such as Pennsylvania, Connecticut, and Minnesota, contain, substantially the same provision as that of the law of the state of New York, above quoted; that the Massachusetts Banking Act contains like provision, excepting that a 3-year period instead of a 5-year period, beyond the maturity of bonds is specified; that the most recent issue of applicant's first and refunding mortgage bonds matures in the year 1966; that it is desirable that said issue of bonds, together with other issues of applicant's first and refunding mortgage bonds previously sold and those which may hereafter be sold, should qualify as legal investments for savings banks and trust funds in as many states of the United States as is possible; that by effecting such purpose, the market for applicant's bonds is definitely broadened and applicant is enabled to dispose of its said bonds at higher prices than would otherwise be obtainable; in other words, the matter of the legalization of applicant's bonds as savings banks investments has a definite bearing upon the cost of money to your applicant; that in order to qualify applicant's said last mentioned first and refunding mortgage bonds as savings banks investments in the state of New York and certain other states of the United States, it is essential that your applicant possess the requisite franchises and franchise rights extending to the year 1971; and that the exercise by your applicant of the right, privilege, and franchise granted by the aforementioned Ordinance No. 258 of the board of supervisors of the county of Mendocino (which said franchise expires on or about January 15, 1987) together with other rights, privileges, and franchises now possessed and exercised by your applicant and those obtained and hereafter to be obtained, is essential to enable applicant to so qualify its said bonds."

I think it is not necessary for this Commission to interpret the New York or other statutes referred to or to decide whether the word "franchise" in the New York statute embraces certificates of public convenience and necessity such as are issued by this Commission. We should make our action clear, so that officials of the other states who have the duty of interpreting and administering their statutes can know what we are doing. They can then determine whether the action we take meets the requirements of their statutes.

It must be noted that the franchises which are required are "all franchises necessary *to operate* in territory in which at least 75 per cent of its gross income is earned," and that franchises for the use of

roads only would not meet this requirement. Since applicant's principal reason for seeking this franchise is to qualify its bonds, as disclosed by testimony presented by it, it may be considered that it seeks in this proceeding authority "to operate" as opposed to mere permission to use the roads where it operates under other authority. This was the interpretation I placed on its application in concurring in Decision No. 32751. To operate it must "maintain" and if it increases the territorial scope of its operations it must "construct." [1] At least if the order is dealing with operations, the Commission can by controlling construction control the territorial extent of operations.

The prayer at the end of the original application in this proceeding is as follows:

"Wherefore, applicant, Pacific Gas and Electric Company, prays that this Honorable Commission duly give and make its order and decision granting to applicant a certificate declaring that the present and future public convenience and necessity require, and will require, the exercise by it of the right, privilege, and franchise granted by said Ordinance No. 258 of the board of supervisors of the county of Mendocino, state of California, all as provided for in § 50(b) of the Public Utilities Act of the state of California."

The order contained in Decision No. 32751 of which amendment or modification is sought is as follows:

"It is hereby *ordered* that a certificate of public convenience and necessity be and hereby is made and granted to Pacific Gas and Electric Company to exercise in part the rights and privileges granted to it by the county of Mendocino, state of California, by Ordinance No. 258, adopted December 16, 1936, namely, for the construction, maintenance, and operation of electrical lines, plant, or system within such portion or portions of said county as are now served by Pacific Gas and Electric Company and which hereafter may be served by it through extensions of its existing system when made in the ordinary course of business as permitted by any applicable rule or rules prescribed by or approved by the Commission governing the making of such extensions, or in accordance with any general or special authority granted, provided, however, that no such extension of line, plant or system shall be made into any territory in said county at the time receiving electric service through the facilities of another utility or political body unless express authority of the Commission first be obtained, and provided, further, that no claim of value for such franchise or the authority hereby granted in excess of the actual cost thereof shall ever be made before the Commission or before any court or other public body."

The petition for modification or amendment alleges:

"1. The order evidences a failure to take into account the distinction between a petition under § 50(a) of the Public Utilities Act and a petition under § 50(b) of said act with the result the Commission has undertaken to pass upon and decide matters not at issue or involved in Application No.

[1] It must either construct new lines or purchase existing ones. The purchase of the existing lines of other public utilities involves other questions of statutory construction which it is not necessary to discuss here.

21744, namely, the right of petitioner to hereafter begin the construction of an electric line, plant or system, or any extension of an electric line, plant or system in the county of Mendocino.

"2. *Although the order does not grant petitioner a certificate authorizing it to construct any electric line, plant or system,* or any extension of electric line, plant or system in the county of Mendocino, it undertakes to place a prohibition upon the right of petitioner respecting the making of certain extensions, namely: any extension of line, plant, or system into any territory in said county at the time receiving electric service through the facilities of another utility or political body; and

"3. The order undertakes to impose conditions upon the right of petitioner to make extensions of its existing electric system in the county of Mendocino not contemplated or warranted by the Public Utilities Act, namely that applicant shall not, unless express authority of the Commission be first obtained, make any extension of line, plant, or system into any territory in the county of Mendocino at the time receiving electric service through the facilities of a 'political body.'" (Italics supplied).

By the portion of said petition italicized above, the applicant disclaims that Decision No. 32751 authorizes it to construct any line, plant, or system. What then does it or the supplemental order grant?

The foregoing allegations refer to §§ 50(a) and 50(b) of the Public Utilities Act. The essential portions of these sections are as follows:

"Section 50(a) No. . . . electrical corporation . . . shall henceforth begin the construction . . . of a line, plant, or system, or of any extension of such . . . line, plant, or system, without having first obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such construction; provided, that this section shall not be construed to require any such corporation to secure such certificate for an extension . . . into territory either within or without a city and county, or city or town, contiguous to its . . . line, plant, or system, and not theretofore served by a public utility of like character, or for an extension within or to territory already served by it, necessary in the ordinary course of its business; and provided, further, that if any public utility, in constructing or extending its line, plant, or system, shall interfere or be about to interfere with the operation of the line, plant, or system of any other public utility, already constructed, the Commission, on complaint of the public utility claiming to be injuriously affected, may, after hearing, make such order and prescribe such terms and conditions for the location of the lines, plants, or systems affected as to it may seem just and reasonable.

"(b) No public utility of a class specified in subsection (a) hereof shall henceforth exercise any right or privilege under any franchise or permit hereafter granted, or under any franchise or permit heretofore granted but not heretofore actually exercised, or the exercise of which has been suspended for more than one year, without first having obtained from the Commission a certificate that public

convenience and necessity require the exercise of such right or privilege; . . ."

Subsection (b) of § 50 of the Public Utilities Act is ambiguous. The legislature may have enacted it in order to authorize the Commission to grant certificates to exercise franchises *to operate* granted by counties. If this is its purpose and meaning, it has no application here because it would appear from the decision of the supreme court in Oro Electric Corp. v. Railroad Commission (169 Cal 466, PUR 1915C 191, 147 Pac 118) that in the absence of statutory or constitutional authority which has not come to my attention, California counties do not have authority to grant franchises "to engage in the business of furnishing electric current," i. e. *to operate,* and that their authority is limited to the narrower grant of a right to use the roads, etc., in carrying on that business or in operating. Therefore, no authority *to operate* could have been granted legally by the Mendocino county franchise which the Commission could certificate, in spite of the fact that by its terms the franchise ordinance purports to grant the right to erect, construct, and maintain electric lines in the streets and *to use* such electric lines for the purposes set forth. The grant of the right to use or to operate is beyond the power of the county under the Oro Electric Decision, and there is no operative right granted by the county for the Commission to certificate.

A second possible interpretation is that the legislature by this subsection intended that the Commission should only certificate the rights granted by counties to use the roads; that consideration of operative rights was not contemplated as within the purview of the subsection, but that the utility should seek and obtain rights to operate under other appropriate laws.

If this is the meaning intended to be adopted by the majority of the Commission, I could concur in the supplemental order, but I believe the order or opinion should make it clear what the Commission is doing. Operative rights would not be involved under this interpretation of the statute, and no limitations on the right to operate under the order would be involved.

A third interpretation of the section would be that when a utility has obtained a county franchise to use the roads, the Commission under the authority of subsection (b) of § 50 could authorize the utility to operate (distinguished from approving a county's grant of a right to operate). Under this interpretation operative rights are involved, and I believe that in the instant case limitations on that right greater than provided for in the supplemental order should be provided. Amendment of applicant's petition to include a request for a right to operate might be necessary in order to grant this authority. I could concur in a grant of a certificate to operate in Mendocino county under this interpretation if proper territorial and other limitations were included in the order.

The foregoing supplemental order in this matter does not make it clear whether the Commission is granting a certificate to operate, or only a certificate approving applicant's use of roads where it now has or hereafter obtains rights to operate. In lan-

guage, it only authorizes use of the roads since it only authorizes applicant to exercise the "right and privilege granted by the county of Mendocino" and the only right or privilege which the county can grant is the right to use the roads. This does not give the applicant what it appears to need and seek, and which it may think and represent it has obtained unless the order is clarified.

If by the ambiguous language used in the supplemental order, it is intended to grant rights to operate, then the fundamental question in this proceeding appears to me to be whether the Commission can or should find that the public convenience and necessity require that applicant have a certificate to operate in all parts of a county when it now operates in less than one-third of the territory of the county, in a proceeding in which no showing was made of any plan to extensively enlarge its operations and where the evidence shows that substantial parts of the county not served by applicant are being served by other utilities and one municipal operation. I do not see how the Commission can make such a finding or wherein it would be desirable if the Commission had the authority.

It seems to be wise and proper and within the scope of the regulatory function if the Commission is issuing a certificate for this applicant to operate electric lines in the county of Mendocino, to make it clear that permission is not thereby granted to applicant to operate wherever in the county it may desire to do so without securing further authority from the Commission. The wording of the original order in this matter (Decision No. 32751) was directed to that end.

Applicant has pointed out that following its past practices it would, even though granted a certificate unlimited in its terms, apply under subsection (a) of § 50 for a certificate before undertaking any major construction project in Mendocino county involving any considerable outlay of money. But extensions of considerable magnitude may ultimately be made in the course of what might be termed ordinary extensions a little at a time and with perhaps small financial outlay at any one time, and I feel that the Commission should not by granting a certificate in this matter unlimited as to territory except by the boundaries of Mendocino county inadvertently authorize the applicant to make unlimited extensions to the extent that it "infringes" on territory being served at the time such extension is made by another agency (publicly or privately owned).

Ample provision may be contained in the Public Utilities Act for the continuous regulation of the operation and maintenance of electrical lines and plant which may be exercised from time to time and as new situations arise. Similar authority may exist as to construction, but it would be unfortunate if the sensible use of that authority should require the Commission to order the utility to cease and desist from completing the construction of lines which it had commenced under the mistaken assumption that it had authority (in spite of its disclaimer) to construct such lines or perhaps even to forbid it to use electric lines or other plant which it had constructed under such mistaken authority. Un-

der either of these circumstances investment theretofore made would be rendered useless.

To attempt to regulate construction ex post facto if it resulted in the necessity of abandoning completed lines, would result in definite economic loss, even though worse results might follow from not forbidding their use. It seems entirely advisable, therefore, that the Commission retain control in the first instance over the construction of new lines to the end that no such economic loss shall hereafter occur.

Subsection (c) of § 50 provides:

"(c) Before any certificate may issue, under this section, a certified copy of its articles of incorporation or charter, if the applicant be a corporation, shall be filed in the office of the Commission. Every applicant for a certificate shall file in the office of the Commission such evidence as shall be required by the Commission to show that such applicant has received the required consent, franchise or permit of the proper county, city and county, municipal or other public authority. When a complaint has been filed with the Commission alleging that a public utility of the class specified in subsection (a) of this section is engaged or is about to engage in construction work without having secured from the Commission a certificate of public convenience and necessity as required by the provisions of this section, the Commission shall have power, with or without notice, to make its order requiring the public utility complained of to cease and desist from such construction until the Commission makes and files its decision on said complaint or until the further order of the Commission. The Commission shall have power, after hearing, to issue said certificate, as prayed for, or to refuse to issue the same, or to issue it for the construction of a portion only of the contemplated . . . line, plant, or system, or extension thereof, or for the partial exercise only of said right or privilege, and may attach to the exercise of the rights granted by said certificate such terms and conditions, including provisions for the acquisition by the public of such franchise or permit and all rights acquired thereunder and all works constructed or maintained by authority thereof, as in its judgment the public convenience and necessity may require."[2]

It is obvious that under this subsection the Commission "may attach to the exercise of the rights granted by said certificate such terms and conditions . . . as in its judgment the public convenience and necessity may require."

The problem presented here, if rights to operate are being granted, is one of giving to the applicant the authority to continue to operate and maintain its lines in territory where it is now serving, where it is the only agency distributing electricity to the general public and where obviously the continuance of such service is required by public convenience and necessity. There is the further problem

[2] It has been contended that the last sentence of the foregoing quotation refers only to subsection (a) of § 50, and in support of this it is pointed out that in the next preceding sentence subsection (a) is specifically referred to. However, subsection (c) is introduced with the phrase "Before any certificate may issue *under this section*" and the later reference to subsection (a) is obviously only for the purpose of a short description of the type of utilities being dealt with, in the same manner that the phrase "No public utility of the class specified in subsection (a)" is used at the beginning of subsection (b).

of giving the applicant such authority as it may require from day to day or week to week to make such extensions as are made in the ordinary course of business to serve new customers in the same or contiguous territory, or to give better or more extensive service to existing customers without having to come to the Commission for a special order for each such extension. Opposed to the problem of giving the applicant what it needs is the problem of retaining in the Commission the authority to regulate its competition with other distributors of electricity and particularly of retaining control, in the public interest, over the development of electrical service in portions of the county not now served. When this service is required and can be rendered on a sound economic basis it may be that it can be done best by this applicant, by one of the other companies now serving or by the city of Ukiah, or by some other agency, publicly or privately owned, not now known or contemplated. I think Decision No. 32751 gives the applicant all the authority it now requires and all that can be given it now without authorizing it in advance to engage in competition with others lawfully serving, and to extend into territory in which the prospective consumers might better be served by someone else. These questions should be decided as they arise. It is impossible to contemplate all such future situations and provide for them in advance, other than by retaining considerable authority in the Commission to retain general control over the extension of applicant's operations and the construction of new lines.

The solution of this complex problem found in Decision No. 32751 is not the only possible one. Applicant has suggested that jurisdiction of the Commission would be fully retained under a certificate unlimited territorially but containing a condition that the Commission might at any time in the future revoke it as to any part of this county where applicant had not extended its operations. To make this effective, however, it might be necessary for the Commission to make the revocation after construction work had been commenced or even completed, which as hereinbefore stated would be economically unsound.

The certificate could be limited to areas where applicant now actually serves but this appears to be too restrictive and might require applicant to come to this Commission for each extension no matter how minor. Customers desiring new services near existing operations under circumstances which the rules of the applicant permit should have that service as soon as it can be provided physically and time should not be lost while the applicant applies to the Commission and the Commission investigates and decides.

Another method of meeting the situation might be in some manner to allocate the territory of the county among the various existing utilities serving therein. There is no evidence in the record of this proceeding upon which such an allocation could be made, and furthermore it would be based upon the fallacious assumption that all parts of the county as developed would or should be served by one of the existing utilities.

Applicant has contended that it is being treated unfairly in the order,

modification of which is sought, in that its future certificated rights are limited by the Commission whereas some of the other utilities operating in the county may have county-wide operating rights which are at present unrestricted. Decision No. 32751 does not purport in any way to affect any existing certificated rights which applicant has through its various franchises and certificates obtained prior to that being dealt with in this proceeding. If the other utilities operating in the county seek new certificates to operate, I believe they should be subject to the same restrictions which should be placed on applicant in this proceeding. It may be, further, that the Commission on its own motion or on complaint will at some time need to investigate and limit existing rights to the extent it has authority to do so. That question, however, is in no way embraced within the scope of this proceeding.

"Political body" was used in the original order apparently as a comprehensive term to embrace all the various types of agencies which might distribute electricity other than through privately owned public utility systems, and it so should have been construed to embrace municipal and district operations or operations by any other political subdivision or public agency. The phrase "political body" may not be broad enough to cover all such organizations, and I therefore believe there should be substituted for it the phrase "political body or other organization lawfully rendering service."

It should be pointed out in this connection that Decision No. 32751 expressly refrains from deciding for all future time the franchise rights and operating rights of applicant in Mendocino county, and the purpose of it is to retain in the Commission authority to meet any problems of extension of service, construction, and competition which may arise in the future as they arise, rather than to attempt to prejudge them when the facts are not before the Commission because they do not exist. It seems to me that the same reasoning which requires that authority be retained in the Commission to regulate possible future competition between privately owned utilities applies equally to the retention in the Commission of such authority as it may have over regulating competition between the applicant and public agencies in the future. The fact that the Commission does not under existing law have the authority to regulate the activities of public agencies does not seem to me to indicate the applicant should therefore be given blanket authority to compete as it sees fit with such agencies or associations. This does not necessarily mean that under a given set of facts in the future the Commission might not properly decide to permit competition. The decision should be made upon the facts as they exist, however, at the time the competition is proposed.

In this connection applicant has stated that under a strict interpretation of Decision No. 32751 as drawn, applicant would not be permitted to reconnect a service which had been disconnected if a public agency or association had started to render service in a community in competition with it, or would not be permitted to extend its service to a new customer within the area which it might at the

time be serving. I do not believe this was the intention of the order. It was intended to deal with areas rather than individual services, and any bona fide development within territory being served by the applicant should not, I believe, have been construed as a violation of the order contained in Decision No. 32751 had it remained in effect.

To conclude:

(1) The Commission should decide and state what rights it is granting before issuing this order. Instead, a majority of the Commission has signed an order "in the language of the statute." That might be proper were the statute not ambiguous, as is the case here.

(2) If a right to operate is being granted, limitations at least equal to those in Decision No. 32751 should be retained.

HAVENNER, Commissioner, dissenting: I concur in the foregoing dissenting opinion in so far as it deals with the need for limitations on the granting of operating rights.

SECURITIES AND EXCHANGE COMMISSION

Re Central States Power & Light Corporation

[File Nos. 70-245, 70-266, Release No. 2715.]

Consolidation, merger, and sale, § 61 — Abandonment of application.

1. Abandonment by the seller of an application to sell renders moot an application by the purchaser for approval of a property purchase, since the purchase cannot validly take place without approval, not only of the acquisition, but also of the sale, p. 309.

Consolidation, merger, and sale, § 65 — Parties — Intervention.

2. A petition to intervene in a proceeding relating to a property transfer, for the sole purpose of urging that a moot application in another proceeding relating to the same property be acted upon before action is taken in the proceeding in which intervention is sought, should be denied, p. 309.

[April 25, 1941.]

APPLICATION *to intervene in proceeding relating to a transfer of property; denied.*

APPEARANCES: Francis H. Baldy and Lester Nurick, for the Public Utilities Division of the Commission; Joseph R. Harmon, Richard Jones, and Nathan S. Blumberg, for Central States Power & Light Cor-

poration; A. B. Manion, for Frank J. Lewis; James E. Dorsey,[1] for Otter Tail Power Company.

By the COMMISSION:

[1, 2] The question before us is whether we should grant an application by Frank J. Lewis to intervene as a party in this proceeding.[2]

The proceeding relates to two declarations filed by Central States Power & Light Corporation, a registered holding company, pursuant to the Public Utility Holding Company Act of 1935 and the Rules and Regulations promulgated thereunder. One of these declarations was filed pursuant to Rule U-12D-1 and relates to the proposed sale by the declarant to Otter Tail Power Company of the declarant's holdings of stock and debt of its wholly owned subsidiary, Central Light & Power Company. The other declaration was filed pursuant to Rule U-12C-1 and relates to the proposed acquisition by the declarant of part of its outstanding bonds by purchase thereof in the open market with the proceeds of the aforesaid sale, and of another sale not involved herein.

In the course of the joint hearing that was held with respect to the two declarations, counsel for Lewis sought leave to intervene.[3] Counsel for the declarant objected. Oral argument on the question was had before the Commission.

It appears that Lewis claims to have a contract to purchase from Ogden Corporation, parent of the declarant, such parent's holdings of the declarant's outstanding stock and debt. The stock and debt now proposed to be sold to Otter Tail Power Company are assets underlying the securities which Lewis claims he has a right to purchase from Ogden Corporation.

Ogden Corporation, while admitting that Lewis once had such a contract, asserts that it has expired and that Lewis no longer has any right to purchase thereunder. Litigation as to this dispute is presently pending in the United States district court for the northern district of Illinois, eastern division.

Ogden Corporation is successor in reorganization to Utilities Power and Light Corporation and the contract with Lewis was originally entered into between him and the trustee appointed in the reorganization proceedings. Ogden Corporation, as successor in reorganization and pursuant to provision made in the contract, succeeded to the rights and obligations of the trustee thereunder.

Shortly following the entering into of the contract, the trustee filed with us an application, pursuant to Rule U-12D-1, for approval of the sale to Lewis. About the same time Lewis filed with us an application,

[1] Mr. Dorsey's appearance was noted on the record but he did not ask to be heard or otherwise participate in the proceeding.

[2] The application to intervene in this proceeding was filed on April 3, 1941. On April 7, 1941, an amended application was filed which seeks to intervene not only in this proceeding but also in a proceeding entitled Re Central States Power & Light Corp. Files 70–254, 70–267. The instant opinion and order to be entered herein constitute the action of the Commission with respect to Frank J. Lewis' application to intervene in this proceeding. Disposition of the application with respect to the proceeding entitled Re Central States Power & Light Corp. Files 70–254, 70–267, is made by order of the Commission dated April 25, 1941, Public Utility Holding Company Act Release No. 2717, without opinion.

[3] See footnote 2, *supra*.

pursuant to § 10 of the Act, 15 USCA § 79j, for approval of the acquisition by him. After Ogden Corporation succeeded to the rights and obligations of the trustee it filed with us an application in effect adopting as its own the application previously filed by the trustee. The application to sell and the application to purchase were set down for joint hearing.[4] Hearing thereon commenced but was suspended to permit of the making of certain field studies by the staff of the Commission. Before these studies were completed Ogden Corporation notified us, by letter dated October 22, 1940, that it considered its contract with Lewis terminated and that, accordingly, it desired to withdraw its application to sell to Lewis. On February 4 and February 28, 1941, the declarations involved in the present proceeding were filed.

Lewis asserts an interest in the proceeding and seeks to intervene solely to contend that we should first pass upon his application to buy the before-mentioned holdings of Ogden Corporation before passing upon the declarations now filed with respect to the sale by Central States Power & Light Corporation of assets which underlie such holdings of Ogden Corporation.[5]

The purchase by Lewis could not validly take place without our approval not only of the acquisition but also of the sale. Under these circumstances we do not feel called upon to pass on an application to purchase in the absence of an application to sell. When the seller abandoned the application to sell, the application to purchase became moot. Since Lewis seeks to intervene solely to request the Commission to act upon an application which has become moot, no useful purpose will be served by permitting such intervention.

As Lewis himself asserts, we are without jurisdiction to pass on his contractual dispute with Ogden Corporation. Neither does he assert that we should delay action on the instant declarations until such dispute is determined. However, we think it appropriate to point out that for us to do so would be in effect to grant injunctive relief, which can more appropriately be sought elsewhere.

The application to intervene will be denied. An appropriate order will issue.

ORDER

Frank J. Lewis having applied for leave to intervene as a party in this proceeding, Central States Power & Light Corporation, the declarant herein, having objected to such intervention, and oral argument having been had before the Commission:

The Commission having duly considered the matter and having issued its finding and opinion with respect thereto;

[4] The proceedings with respect to the two applications were given File No. 56-78.

[5] Upon oral argument of Lewis' application to intervene in the instant proceeding, counsel for Lewis stated that, if the application were granted he would waive any right to cross-examine witnesses and to introduce evidence upon the hearing of the instant declarations. In Re Central States Power & Light Corp. (1941) File Nos. 70-254, 70-267, Lewis was permitted, pending decision upon his application to intervene in that proceeding, to participate at the hearing and cross-examine witnesses in order to avoid the necessity of recalling said witnesses and reconvening the hearing in the event of the granting of such application to intervene.

It is *ordered* that such application of Frank J. Lewis to intervene as a party in this proceeding be, and hereby is, denied.

NEW HAMPSHIRE PUBLIC SERVICE COMMISSION

Order of Railroad Telegraphers

v.

Boston & Maine Railroad

[D-T2077.]

Service, § 267 — Discontinuance — Railroad station.

A railroad should be permitted to discontinue agency service at a station in order to reduce operating expenses when this would not result in unreasonable or inadequate service; excess of revenues over expenses rather than the necessity for or the adequacy of the existing or proposed service is not to be accepted as a guide.

(BARRY, Commissioner, dissents.)

[March 21, 1941.]

PROTEST *against proposal to discontinue station agency service; proceeding dismissed.*

APPEARANCES: W. A. Cole, for the Boston & Maine Railroad; H. L. Jones, for The Order of Railroad Telegraphers; J. R. Donovan and Walter Ryll, pro se; C. W. Allen, pro se, and for the town of Ashuelot; J. H. Dickinson, for the Dickinson Real Estate and Lumber Company of Ashuelot.

SWAIN, Commissioner: Under date of November 30, 1940, the Boston & Maine Railroad advised the Commission that it proposed to discontinue its station at Ashuelot, New Hampshire, the agency at that point, and Ashuelot as a station in its tariffs. The notice to the public of this proposed change brought protests from The Order of Railroad Telegraphers under date of January 3, 1941, and from various citizens of Winchester located near Ashuelot station on January 28, 1941. A hearing was held at Concord, February 5, 1941.

Ashuelot is a station in the town of Winchester located on the branch line of the Boston & Maine Railroad running between Keene and Hinsdale. Ashuelot station is located 2.2 miles west of the Winchester station and 3.6 miles east of the station at Hinsdale. By highway the corresponding distances are .2 mile greater. Under the proposal the side tracks now under the jurisdiction of the Ashuelot agen-

cy would be placed under the jurisdiction of the Hinsdale agency.

The following table shows pertinent data as to revenues on traffic originating or terminating at Ashuelot, except passenger revenues which represent revenues from tickets sold at the station:

	1938	1939	1940
Freight			
Received	$64,913.92	$84,124.77	$89,855.10
Forwarded	26,378.39	23,295.48	18,032.55
Passenger ..	141.01	164.98	206.12
Express	331.30	332.13	286.51
Demurrage	5.50	15.40	46.20
Miscellaneous	127.48	32.31	85.77
Total	$91,897.60	$107,965.07	$108,512.25
Deductions [1]	52,005.04	63,226.17	66,325.20
Revenues accruing to B. & M. ..	$59,892.56	$44,738.90	$42,187.05

[1] Deductions represent revenues accruing to other railroads and the Express Agency.

It is apparent that the revenues on traffic originating or terminating at this station far exceed those in most cases involving station discontinuance coming before us. However, an analysis of the freight traffic for the month of December, 1940, discloses that for that period 99.8 per cent of the weight and 99.5 per cent of the revenue accrues from one industry engaged in the manufacture of paper, and that 99.2 per cent accrued from carload traffic. This industry has its own sidetracks located some distance from the station so that no change in the physical handling of this carload traffic is involved. An analysis of freight traffic between July and December confirms the fact that most of the traffic is credited to one industry.

	Carloads	Less Carload Shipments
The Robertson Company	293	19
All other parties	...	35

The freight charges assessed on the less carload shipments for all other parties indicate that these shipments in general are relatively small.

The Robertson Company prefers to be under the jurisdiction of the Hinsdale agency. It has one competitor also in the town of Winchester which is under Hinsdale agency at the present time. A number of other paper manufacturers are located in Hinsdale. Of the five paper manufacturers located along the Ashuelot river in this vicinity the Robertson Company is the only one not under the Hinsdale agency. The Robertson Company is in the Hinsdale exchange for telephone service and its letterhead gives Hinsdale as its location. Occasionally inbound carload freight is waybilled to Hinsdale in error and under present tariff provisions. This results in additional charges for diversion to its sidetracks under the jurisdiction of the Ashuelot agency.

The placing of this industry in the Hinsdale agency will give it a parity in rates with its competitors. The Hinsdale rates are lower than the Ashuelot rates to points south and west in many instances. The record shows, for example, that the rate to Salisbury Mills, New York, on carloads of paper of the kind here manufactured is 24 cents per hundred pounds from Ashuelot, as compared with 22 cents from Hinsdale. This difference, according to the filed classification, represents a disadvantage of $6 on a minimum carload of tissue paper—possibly an average of $8 or more per carload on actual weight as the Boston & Maine proportion on six carloads averages $4 per car—to the Robertson Company in competing with the manufac-

turers taking the Hinsdale rates, including the Ashuelot Paper Company located one mile nearer Hinsdale in the same township as the Robertson Company. If this difference in rates applied to all its carload shipments made in 1940, the failure to include the Robertson Company in the Hinsdale group would penalize the industry between $1,000 and $2,000. This is evidently more than the total freight charges paid by all other receivers and shippers of freight at Ashuelot. Presumably the difference in rates which exist is a factor in its bidding successfully for business and presumably employment in the community depends to some extent on the success in bidding experienced.

The Winchester Reel Company located at the No. 2 Robertson Company mill objects to the proposed discontinuance. During the last six months of 1940 it received six less-than-carload shipments, or an average of one a month with average charges $1.72 per shipment and per month. Its outboard shipments totaled five, with total charges of $43.32. Under the proposal the Reel Company may be required to truck its shipments to and from Hinsdale, a distance of 2.7 miles instead of 1.1 miles as at present. The highway used is the Dartmouth College Road, a main trunk highway. However, the railroad proposes to continue its pickup and delivery service by truck through this territory. Carload shipments, if any develop, would be delivered or taken from their sidetrack.

Ashuelot would continue as a flag stop for passenger trains, and express would continue to be handled by the Railway Express truck out of Winchester. In view of the services available by passenger train, and by express and railroad trucks, it appears that the inconvenience actually experienced will largely be limited to the unavailability of a heated station for the few passengers handled at that point.

The annual expenses of the station total $1,930 which are as follows: Agent's salary $1,830; coal for heating, $50; lighting, $20; and telephone, $30. The witness for the railroad testified that the additional traffic at Hinsdale would not require additional help if the Ashuelot station was closed, so that apparently there are no offsetting expenses to reduce the saving of $1,930 annually. As shown by the exhibits, most of the revenue accrues from carload traffic which requires little of an agent's time.

It appears that if the limits of the Hinsdale station jurisdiction are extended 1.4 miles to include the sidetracks of the Robertson Company, the total revenue which would accrue through the station at Ashuelot would be less than $1,000 annually. It is clearly to the advantage of that industry—responsible for revenues exceeding $100,000—to be so included. However, the question for our determination is whether or not reasonable and adequate service requires the maintenance of station service at Ashuelot under present conditions. The amount of revenue is not a controlling factor in this determination. The revenue may be produced by carload traffic, for which near-by agency service is not essential, or by less carload traffic, for which such service is of real convenience and assistance to

shippers in saving both time and money. In the final analysis the necessity and use of the service must be the controlling factors.

Carload traffic—here producing approximately 99 per cent of the revenue —will be given its present service, the only change being that shipments will be waybilled to and from Hinsdale—an advantage desired by the shipper. Pickup and delivery service is available for less-than-carload shipments which are of small volume in any event. Express is to be handled by truck. Passenger train service is available at Ashuelot, which will remain a flag stop.

Measured by the necessity and use of agency services and station facilities, it is clear that these services and facilities at Ashuelot are not reasonably necessary for the public use under present conditions. Such facilities will remain available either at Winchester station 2.4 miles east or at Hinsdale 3.8 miles west, respectively, of the Ashuelot station.

The proposal is made by the railroad in order to reduce its operating expenses. It clearly should be permitted unless the resulting service would be unreasonable and inadequate. It appearing that the discontinuance of agency service at Ashuelot would not result in unreasonable or inadequate service, this proceeding is dismissed.

The majority has given consideration to the views expressed in the dissenting opinion. This opinion would substitute as a guide in station cases the excess of revenues over expenses rather than the necessity for or the adequacy of the existing or proposed service. The fallacy of such a guide is well illustrated in the instant case where revenues are substantially all from carload traffic and use by and revenues from other sources of traffic are negligible. By unanimous action the Commission as presently constituted required station service at Campton where revenues were $4,900 in 1939, largely from less-than-carload traffic and refused to require such service at North Woodstock where revenues were $13,400 in 1939, mostly from carload traffic, Boston & Maine Railroad Employees v. Boston & Maine Railroad (1940) 22 NHPSC 287, 290.

Our authority to require station service can only be invoked when the service given is found to be unjust, unreasonable, unsafe, improper, or inadequate. No such finding is proper in this case. Two stations have been maintained in the town of Winchester, one Ashuelot, 2.2 miles apart. This distance may be compared to those which prevail in Concord, Manchester, and Nashua where greater revenues are collected yet these cities are served by one station. The railroad now maintains but one freight station in Boston although at one time it had a number of such stations serving that city. We cannot ignore realities in considering a case of this nature.

The minority analysis of the industrial situation cannot be sustained by the record. The record clearly shows that the proposal to close the station at Ashuelot originated with the general superintendent without reference to the advantages or disadvantages to industry. The dissenting opinion entirely misses the significance of the testimony of the witness who called to explain the matter to the industry. The record clearly shows that the rate

situation was discovered after plans had been made for and the industry had agreed to the discontinuance of agency service. It is clear that the proposal did not stem from any desire to subsidize industry. The majority is inclined to the view that rather than a subsidy to industry, the change will result in the removal of what might be regarded as a discrimination which has existed for a long period with very scant justification, at least since the time that the Ashuelot Paper Company was put under the jurisdiction of the Hinsdale agency.

As previously stated, the majority decision rests on the absence of a reasonable use of and need for station services as shown by statistics of revenues and the nature of the traffic in the immediate past during which time the industry was under the jurisdiction of the Ashuelot agency. We cannot accept the theory that substantial carload revenues require the maintenance of a standby agency service as unnecessary and unused as the one here in question.

Smith, Chairman, concurs.

BARRY, Commissioner, dissents, in separate opinion: I believe the protest in the instant case should be sustained.

This is the most flagrant case of blindness to general, public convenience and comfort that the Commission records can produce. In most cases calling for station discontinuance revenues are lower than expenses, and relief is sought on the ground of savings, without much reference to public inconvenience. Here, however, no such condition obtains, as is well established by the figures given in the report of the majority.

In the North Woodstock Case cited in the majority opinion there was no protest from shippers and no evidence of increase or decrease to them resulting from the closing of the station.

I am further convinced that the action of the railroad in this case is not based upon a sincere desire to effect a net saving in the Ashuelot-Hinsdale territory, a condition which might justify the closing of the Ashuelot station.

A study of the majority report must lead to a like conclusion. It discovers the dark gentleman in the wood pile, but proceeds to justify his presence and give blessing to his desires. It points out that the Robertson Company, because of its location, is at a disadvantage in the competitive paper industry, and needs a railroad subsidy for protection in its quest for business.

How is this to be done? It is to be accomplished by closing the Ashuelot station and placing the Robertson Company in a zone where freight charges will be lower. The loss in revenue will be offset by the saving in expense incident to the closing of the station in question, and the competitive position of the Robertson Company enhanced.

All these facts point to a decision by the railroad that industry must be protected in its fight for business whatever the cost either to the railroad or its patrons at Ashuelot. What matters the convenience and comfort of the many users of the railroad facilities at Ashuelot or the additional cost in travel and money to them.

The public good must give way to individual desire.

Such a policy is unfair, unequitable, and unjust, and to it I cannot give sanction by dismissing the protest filed herein.

NEW HAMPSHIRE SUPREME COURT. MERRIMACK

Public Service Commission

v.

H. P. Welch Company

(— NH —, 18 A(2d) 826.)

Motor carriers, § 30 — Motor truck drivers — Hours of service — Federal and state regulation.

1. A contention that New Hampshire Laws 1933, Chap. 106, and the Federal Motor Carrier Act, together with rules and regulations adopted thereunder, do not deal with the same subject matter because the state regulations are merely highway regulations, whereas the Federal regulations are designed to protect interstate commerce and workers engaged in it, cannot be adopted, p. 318.

Interstate commerce, § 5 — Effect of congressional action — Supplementary legislation.

2. Supplementary as well as conflicting regulations of the same subject by the states are precluded by the Federal Constitution; hence state regulations governing the hours of service of motor truck drivers in interstate commerce are superseded after the effective date of Federal regulations on the same subject, p. 318.

Interstate commerce, § 38 — Powers of state — Hours of service of truck drivers.

3. The New Hampshire regulations relating to hours of service of truck drivers operating for interstate carriers have been superseded by those of the Federal Motor Carrier Act of 1935 and the regulations of the Interstate Commerce Commission prescribed thereunder, p. 318.

[March 4, 1941.]

BILL *in equity for injunction to restrain interstate motor carrier from violating provisions of state law and orders of Commission regulating hours of service of motor truck drivers; bill dismissed after transfer from superior court to supreme court.*

Bill in equity for an injunction to restrain the defendant from violating the provisions of Laws 1933, Chap. 106, § 8, and the orders of the Public Service Commission promulgated in accordance therewith. The bill alleges that the defendant violated the statute and orders of the Commission in 1937. The defendant in its answer sets forth that it is a common carrier engaged in the transportation of property by motor truck in interstate commerce; that the provisions of Laws 1933, Chap. 106, § 8 and the regulations of the Commission issued in furtherance thereof have been superseded by the Motor Carrier Act of 1935, 49 USCA § 301 et seq., and the regulations of the Interstate Commerce Commission in pursuance thereof. The parties agree that the present bill is based upon the same violations of the statute as those considered in Welch Co. v. State (1938) 89 NH 428, 25 PUR(NS) 473, 199 Atl 886, 120 ALR 282. The only difference in the situation now presented is that, on March 1, 1939, the hours of service regulations of the Interstate Commerce Commission adopted pursuant to the Motor Carrier Act of 1935 became effective. The court (Connor, J.) transferred without ruling the following questions:

"1. As applied to this defendant, are the provisions of §§ 8 and 12 of Chap. 106 of Laws of 1933 as amended by Chap. 169 of Laws of 1933, and the regulations of the Public Service Commission promulgated in pursuance thereof, superseded by the Motor Carrier Act of 1935 and the regulations of the Interstate Commerce Commission promulgated in pursuance thereof?

"2. If not, is rule 4n promulgated by said Order No. 3101 of the Public Service Commission null, void, and of no effect and promulgated without lawful authority as alleged by the defendant?

"3. Has the court power to enjoin and restrain the defendant from violating the provisions of § 8 of Chap. 106 of the Laws of 1933 while engaged in the transportation of property for hire in either interstate or intrastate commerce?

4. Has the court power to enjoin and restrain the defendant from violation of Orders No. 2560 or No. 3101 of the Public Service Commission?"

APPEARANCES: Dudley W. Orr, of Concord, for plaintiff; Robert W. Upton and Richard F. Upton, both of Concord (Richard F. Upton, orally), for defendant.

BRANCH, J.: Our prior decision in this controversy, Welch Co. v. State (1938) 89 NH 428, 25 PUR (NS) 473, 199 Atl 886, 120 ALR 282, proceeded squarely upon the assumption that when the regulations of the Interstate Commerce Commission became effective, they would supersede the state regulations here involved. The same is true of the decision of the Supreme Court of the United States in the same case, where it is said: "Without so deciding, we assume, so far as concerns the periods of continuous service condemned by the state Commission, that when the Federal regulations take effect they will operate to

supersede the challenged provisions of the state statute." Welch Co. v. New Hampshire (1939) 306 US 79, 84, 83 L ed 500, 27 PUR(NS) 238, 241, 59 S Ct 438, 440. We are now asked to hold that the underlying assumption of the previous opinion was unsound and that the local regulations are still effective although, since March 1, 1939, regulations of the Interstate Commerce Commission regulating hours of service have been in force. Due regard for the reasonable reliance of parties upon decisions of this court to determine the extent of their legal obligations, as well as obvious considerations of judicial consistency, unite to impose upon the plaintiff a heavy burden of persuasion.

[1] The contention of the plaintiff that "the two laws do not deal with the same subject matter" and that the New Hampshire statute, together with the regulations of the Public Service Commission thereunder are merely highway regulations, whereas the Federal regulations are designed to protect interstate commerce and workers engaged it it, can hardly be adopted in view of the fact that the section of the statute herein involved, like the applicable rules of the Interstate Commerce Commission, deals specifically with "Hours of Service." Laws 1933, Chap. 106, § 8; Motor Carrier Safety Regulations of the Interstate Commerce Commission, part 5.

[2] Equally unavailing is the contention of the plaintiff that the two regulations may stand together. "Supplementary as well as conflicting regulations of the same subject by the states are, therefore, precluded by the Federal Constitution as it has been interpreted by the supreme court." University Overland Express v. Griffin (1938) 89 NH 395, 399, 200 Atl 390, 392.

[3] These two arguments, particularly the first one, together with their corollaries, are the chief reliance of the plaintiff. They cannot be adopted. We therefore conclude that the New Hampshire regulations here in question have been superseded by those of the Motor Carrier Act of 1935 and the regulations of the Interstate Commerce Commission prescribed thereunder. This conclusion renders it unnecessary to decide the other three questions reserved by the superior court.

Bill dismissed.

All concurred.

CALIFORNIA RAILROAD COMMISSION

Re Sacramento Northern Railway et al.

[Decision No. 34014, Application No. 23930.]

Certificates of convenience and necessity, § 137 — Transfer — Effect.

Transfer of a passenger stage right granted to a railroad does not result in the "splitting" of an operative right, or in the creation of a new right, merely because the railroad intends to continue rail operations.

[March 18, 1941.]

APPLICATION *for approval of transfer of certain passenger stage operative rights; granted.*

APPEARANCES: L. N. Bradshaw, for applicant Sacramento Northern Railway; H. C. Lucas, E. A. Bagby, and H. D. Richards, for applicant Pacific Greyhound Lines; Harry A. Encell, for protestant the Gibson Lines; Charles W. Dullea, Chief of Police, and Michael Riordan, Deputy Chief of Police, for Police Commission and Police Department of the city and county of San Francisco.

RILEY and HAVENNER, Commissioners: Applicants request Commission authorization for the transfer of a "passenger stage corporation" operative right (between San Francisco and Pittsburg, and between Walnut Creek and Diablo), together with certain equipment, from Sacramento Northern Railway to Pacific Greyhound Lines. The depreciated value of the equipment is alleged to be $26,402.68, and the total consideration for the purchase of the operative right and equipment is $26,500.

Protestant Beverly Gibson renders passenger stage service between San Francisco and Sacramento. He protests the granting of the application upon the ground that because Sacramento Northern will continue its rail operations, the transfer of its passenger stage right to Greyhound would create a new certificate. Protestant's first argument seems to be that when a railroad is granted a certificate to operate passenger stages, it does not acquire a right separate and distinct from its rail operations. His second argument is that in fact Sacramento Northern's Pittsburg-San Francisco stage right was not granted as a separate passenger stage right, but as an extension and enlargement of railroad "operative rights" acquired earlier from a predecessor railroad. Thus, protestant contends that the granting of the present application will result in a "splitting" and multiplication of operative rights, contrary to precedent.

In 1924 San Francisco-Sacramento Railroad Company (Sacramento Northern's predecessor), having abandoned rail service between Wal-

nut Creek, Alamo, Danville, and Diablo, was granted a certificate to operate passenger stages between those points (24 Cal RCR 542). In 1928 San Francisco-Sacramento Railroad Company was authorized to transfer "all of its property, except its corporate franchise" to Sacramento Northern Railway (32 Cal RCR 353). That authorization to transfer included the Walnut Creek-Diablo passenger stage right. In 1937 Sacramento Northern Railway was granted a certificate, as a passenger stage corporation, between Pittsburg and San Francisco, "not as a separate operating right but as an extension and enlargement of the operating rights heretofore acquired" under the 1928 transfer authorization (Decision No. 29781, Application No. 19967). The rights thus referred to and enlarged obviously were the Walnut Creek-Diablo passenger stage rights, as made clear by the 1937 opinion, which states that the Pittsburg-San Francisco certificate was sought by Sacramento Northern "as an enlargement and extension of its existing stage operations" (Decision No. 29781, sheet 4). It is this enlarged passenger stage operative right, embracing both the Walnut Creek-Diablo and the Pittsburg-San Francisco operations, which Sacramento Northern desires to transfer to Greyhound. The transfer of that enlarged right will not result in the "splitting" of an operative right or in the creation of a new right.

Greyhound's ability to render the service heretofore found to be needed by the public is not questioned, and the record fails to show any reason why the proposed transfer should not be authorized.

Greyhound also requests minor changes in routing in Oakland and in San Francisco, for the purpose of serving its present terminals in those cities. This request appears reasonable and the order will so provide. A resurvey of the routes followed by interurban passenger stages in San Francisco, as suggested by the police department of that city, should be considered in connection with an appropriate proceeding involving at least all of Greyhound's operations, rather than in the present proceeding.

The operative right to be acquired by Greyhound partially duplicates certain of its existing rights, with conflicting restrictions and limitations. Without discussing the effect of the proposed transfer, when consummated, as a merger of conflicting separate rights between the same points, resulting from the acquisition of such rights by one operator, it is timely to suggest that Greyhound, by an appropriate application, seek a restatement and clarification of its operative rights.

Transmission line construction costs can be materially reduced and completion expedited by using Hoosier Crews

HOOSIER ENGINEERING COMPANY

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Canadian Hoosier Engineering Company, Ltd.
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ERECTORS OF TRANSMISSION LINES

Industrial Progress

Selected information about manufacturers, new products, and new methods. Also news on utility expansion programs, personnel changes, recent and coming events.

Utility Maintenance Given Priority Status

PRIORITY status for repair and maintenance materials and equipment required for uninterrupted operation of public utility services and a wide range of industrial processes was assured recently when the Civilian Supply Allocation Division of the Office of Price Administration and Civilian Supply promulgated an allocation program covering such items.

Action was necessitated by growing demands on raw materials as result of the defense program and the priorities granted in connection therewith which have made it difficult for manufacturers of repair and maintenance materials and equipment to fill their orders. Effect will be to assure continued operation of essential industries and services which otherwise might have to curtail because of inability to secure needed repair or maintenance parts.

The program covers 26 industries and services whose continued operation is essential to the public welfare and maintenance of civilian supplies. Other industries will be added when their problems have been analyzed. The program provides that such materials and equipment shall be allocated prior to all other civilian requirements and prior to defense requirements to the extent consistent with the defense program as determined by the Office of Production Management. Administration and enforcement of the program will be carried out by the OPM.

Bonneville Contracts Awarded

COINCIDENT with receipt of the first $4,000,000 to be allocated to the Bonneville Power project from the new $22,858,500 appropriation, available at the start of the fiscal year, Assistant Bonneville Administrator U. J. Gendron has reported the award of construction equipment and material contracts totaling more than $3,450,000.

The purchases included oil circuit breakers, suspension insulators, outdoor bus insulators, truck and lift cranes, delivery trucks, station wagons and passenger cars, Western red cedar poles, crossarm fixtures, carrier current telephone equipment and disconnecting switches. Among the manufacturers sharing in this business are Allis-Chalmers Mfg. Co., General Electric Co., Westinghouse Elec. & Mfg. Co., Pacific Elec. Mfg. Co., Corning Glass Works, R. Thomas and Sons, Porcelain Products, Inc., Ohio Brass Co., Feenaughty Machinery Co., General Motors Corps., Idaho Pole Co., Graybar Elec. Co., Railway and Industrial Engineering Co., Delta Star Elec. Co. and Wm. O. McKay Co.

Aluminum's Expansion Program

ALUMINUM Company of America is meeting the defense emergency by a $200,000,000 expansion program. In addition to expansion of its metal producing works at Vancouver, Wash., the company's plants at Lafayette, Indiana, have been expanded 413 per cent in building area, and the company will, by the end of this year, have an extruded shape capacity of 4,256,000 pounds a month, more than the entire aluminum industry produced monthly in 1939.

The company has almost trebled its forging capacity at its four forging plants. At Vernon, in the midst of the airplane industry on the West Coast, there has been a 350 per cent increase in capacity.

The program of the Aluminum Company is entirely self-financed and crowds into two years the equivalent of at least two decades of peace-time growth.

Forms Electrical Committee

FORMATION of an electrical industry advisory committee which will speed coöperation between industry and Government on defense program problems has been announced by Donald M. Nelson, director of purchases, Office of Production Management.

The Committee has a membership of twenty-four in which both members and nonmembers of trade associations, and large and small units of industry, are represented. It will be purely advisory and will function under the direction of Donald G. Clark, chief of the Equipment and Supplies Branch of the Purchasing Division, and Lewis A. Jones, special advisor on electrical supplies. It will serve the industry as its means of contact with Government throughout the defense program. This will be one of a number of industry committees which will not be directly attached to OPM commodity sections.

Problems which have arisen, and which will

be considered by the advisory committee, include those of the conservation and substitution of materials, simplified practice, revision of specifications, problems of raw materials supply, allocation of production capacity, inventory control, and the like.

Alabama Power Co. Adds a 60,000 Kw Generator

ALABAMA Power Company plans to construct a second 60,000 kw unit in its Gorgas No. 2 steam plant in Walker County, Alabama, to be ready for operation May 1, 1943, according to a recent announcement by Thomas W. Martin, president of the company.

The new unit will be built to operate at 3600 revolutions per minute. This high speed in large units is a comparatively recent development. The Gorgas unit, which will be rated at 60,000 kw, 96 per cent power factor, will operate at a steam pressure of 850 pounds per square inch. It will require a boiler capacity of 600,000 pounds of steam per hour. The boiler will burn powdered coal. At full load the new unit will use 700 tons of coal per day.

The additional generator which will be installed at Gorgas will be the third large steam generator which the company has bought within the past eighteen months, at a total installed cost of about $11,000,000. The first, a 40,000 kilowatt unit, installed in the new Chickasaw Steam Plant, near Mobile, went into operation recently. A second generator of the same size to be installed in that plant was ordered in March of this year, and is expected to be in operation by January 1, 1943.

The additional steam units contracted for during this year will add a total of 140,000 kw in steam capacity to the company's system, bringing the total steam capacity to 294,000 kw. Both the recent units ordered for the Mobile plant and the unit now being ordered for the Gorgas plant were advanced ahead of the company's peacetime schedule because of power requirements in connection with the national defense program.

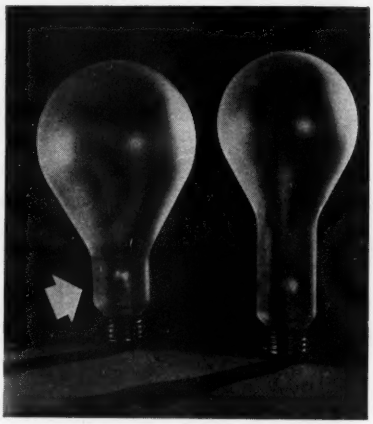
Set Writing Machine Records

A NEW world's all-time typing record 149 net (5-letter) words per minute for one hour of continuous typing has been set on an Electromatic All-Electric writing machine. The record was made by Miss Margaret Hamma, Brooklyn, N. Y. in the annual International Commercial Schools contest held recently in Chicago.

Other records scored on electromatic machines as announced by the Electric Writing Machine Division of International Business Machines Corp. included: Two world's records by Miss Helen Sayer, New York City, who typed 129 net words per minute in the 20-minute novice event and 107 net words per minute in the 30-minute transcribing machine event. The open typewriting record of 128 net words per minute and the business college dictating machine record of 88 net words per minute were set by Miss Velma Crismon, Knapp Business College, Tacoma, Wash.

Vibration Service Lamps Now Available

To overcome vibration, jar and shock which ordinarily seriously impair the efficiency and life of electric light bulbs, the Wabash Appliance Corporation, Brooklyn, N. Y., has announced a new type of vibration service lamp whose construction protects the filament from vibration and jar. It is designed particularly for industrial and commercial use where high frequency vibration set up by motors and machinery in constant use, tend to weaken the average bulb filament and shorten its life span considerably.



Arrow marks the new Birdseye Vibration Service Lamp compared with conventional size lamp.

Checks Refrigerator Prices

A REQUEST that no additional advances in the price of household refrigerators be made without prior discussion with the Office of Price Administration and Civilian Supply has been made by Leon Henderson, Administrator, to 16 leading producers of household refrigerators responsible for approximately 97 per cent of the industry's output.

A considerable rise in prices has occurred during recent months according to the OPACS which pointed out that continuance of such upward trends in the refrigerator and other industries inevitably would result in inflation.

Manufacturers' Notes

Kelvinator Changes

Frank R. Pierce, formerly General Sales Manager of the Kelvinator Division of the Nash-Kelvinator Corporation has been elected Vice-President in Charge of Sales.

Mr. Pierce will direct the sales, advertising and service activities of both the Kelvinator Division, manufacturer of electric refrigerators, ranges, commercial refrigeration products, and ice cream cabinets, and the Nash Motors Division, automobile manufacturers.

Charles T. Lawson will succeed Mr. Pierce, and be General Sales Manager of the Kelvinator Division.

E. Ray Legg, former Western Sales Manager, succeeds Mr. Lawson as Sales Manager of Household Appliances and Don Rulo, becomes Western Sales Manager.

Wallene Joins Johnston-Jennings

Frank O. Wallene, Utilities Director of the City of Cleveland from 1936 to 1940, has been appointed Chief Engineer of the Stowe Stoker Division of the Johnston & Jennings Co., Cleveland, Ohio. Prior to his four years of public service Mr. Wallene had been active for many years in consulting engineering practice in Cleveland, specializing in power plant equipment, plant design, and in designing steam engines for ship propulsion.

Equipment covered by Mr. Wallene's patents will be manufactured by The Johnston & Jennings Co. Included among these is an automatic control between purchased power and isolated plant power where steam is needed for processing and heating requirements.

Warren Advances Four

David Blair, formerly field manager of the Warren Telechron Company, Ashland, Mass., has been named sales manager of the company. H. E. Blackburn, Cleveland district manager, has been recalled to the home office as assistant sales manager. R. T. Woodward has been transferred from Philadelphia to be district manager in Cleveland, and R. J. Buckley has been appointed district manager in Philadelphia.

Kitchen Bureau Appointments

W. A. Grove, advertising manager, Edison General Electric Appliance Company, Chicago, has been elected chairman of the plan committee of The Modern Kitchen Bureau, New York, for 1941-'42. Roger Bolin, sales promotion manager, Westinghouse Electric & Mfg. Company, Mansfield, O., has been elected vice-chairman.

Degree for Distelhorst

S. D. Distelhorst, sales promotion manager of Cochrane Corporation, Philadelphia, has been awarded a professional engineering degree by Purdue University. He graduated from Purdue in 1935 with a bachelor of science degree in electrical engineering.

Mr. Distelhorst's thesis was titled "A Practical Advertising and Sales Promotion Plan for Cochrane Corporation," and was prepared under the direction of Dr. C. F. Harding of Purdue. In addition to Dr. Harding, Professors C. W. Beese, J. H. Bowman, and D. D. Ewing served on the examining committee.

Robertshaw Appointments

The Robertshaw Thermostat Company recently announced the appointment of W. D. Mastin and John B. Selover to the company's sales-engineering staff.

The appointees previously completed an intensive training course in the various departments of the Robertshaw Research Laboratory at Pittsburgh, the Engineering and Manufacturing Division at Youngwood, and at the St. Louis plant of the American Thermometer Company. Mr. Mastin and Mr. Selover will represent the Robertshaw Group (Robertshaw Thermostat Company, Grayson Heat Control Ltd., and the American Thermometer Company). Mr. Mastin becomes manager, southern division, Chattanooga, Tenn., and Mr. Selover, was appointed sales engineer, Chicago.

Norge Appoints McMahon A.M.

Charles H. McMahon has been appointed advertising manager of the Norge division of the Borg-Warner Corporation, according to a recent announcement.

Mr. McMahon formerly was sales manager of the Detroit Vapor Stove division of Borg-Warner and before that was assistant vice president in charge of advertising of the First National Bank of Detroit. He is a past president of the Detroit Adcraft Club. S. M. Adams has been appointed to succeed him as sales manager of the Detroit Vapor Stove division.

Link Belt Promotions

Laurence M. Ewell has been appointed general manager of eastern division operations of the Link-Belt Company, with headquarters in Philadelphia, according to a recent announcement by George L. Morehead, vice president in charge of eastern operations.

Mr. Ewell, who has until now been export manager, and manager of the company's New York office, will be succeeded in that position by Carl A. Woerwag, with headquarters in New York as heretofore.

Altorfer Appoints Advertising Agency

Altorfer Bros. Company, manufacturers of ABC electric washers and ironers, have appointed The Cramer-Krasselt Co., Milwaukee, as advertising counsel, according to an announcement by H. W. Altorfer, vice president and general manager.

Initial activities will be centered on a pro-

Manufacturers' Notes ***(Cont'd)***

gram for expanding the selling efforts of distributors and dealers on ABC home laundry equipment, with special emphasis on sales-training methods and materials.

Johnston to Bendix

Hugh R. Johnston, formerly with Atlas Corporation, has been elected executive vice president of Bendix Home Appliances, Inc., South Bend, Ind.

Death of Guy A. Barker, Johns-Manville

Guy A. Barker, manager of the public utility and electrical products department of the Johns-Manville Corporation, died of a heart attack at his home in Scarsdale, N. Y., June 18th.

Graduating in 1914 from the University of California, he worked as an engineer for the Pacific Gas and Electric Company.

During the World War he served overseas as a captain of the heavy coast artillery of the United States Army.

Mr. Barker joined the Johns-Manville Corporation in 1921 as a sales engineer and later was the Pacific division sales manager and the Chicago district sales manager. He moved to the New York area in 1933 when appointed manager of the electrical products department. He was appointed manager of the public utility and electrical products department last April.

Equipment Literature

Temperature Controls

"What You Should Know About Automatic Controls" is the title of an attractive and interesting pocket size booklet published by The Mercoid Corp., Chicago.

Devoted to a discussion of the types and functions of Mercoid Automatic Controls as related to automatic heating, this informative booklet is written particularly for those who gladly accept the convenience of automatic controls but probably have little opportunity to study their functions.

Protective Fences

A new catalog showing protective fences of the chain link type has been published by the Anchor Post Fence Company. It consists of 40 pages of text with 60 illustrations, showing fourteen different models for public utilities, industrial plants, and other locations. An ingenious composite table gives pertinent information about all types. Structural details are shown by simple line drawings. Another feature is the appearance of the A.I.A. file number on the cover. Interested executives may obtain a free copy of this catalog by addressing the Anchor Post Fence Co., Baltimore, Md., or San Francisco, Cal., and asking for Catalog No. 110.

Fluorescent Catalog

New Permaflector fluorescent lighting equipment is shown in supplement to catalog No. 40 recently issued by the Pittsburgh Reflector Co., Pittsburgh, Pa. The supplement supersedes pages 105-110 inclusive in catalog No. 40. The supplement is attractively printed and consists of 20 pages in which the company's complete line of fluorescent equipment is described and illustrated and pictures are shown of recent installations.

Circuit Breaker

Bulletin B-6165 by Allis-Chalmers Mfg. Company, Milwaukee, Wisc., describes type OX-18 small outdoor circuit breaker of the frame mounted type rated 50,000 kva, 7500 volts, 400 to 600 amps. for circuit protection in moderate capacity applications. This quick-clearing (8 cycle) breaker of non-oil-throwing design, is manually or electrically operated and is especially suited for automatic reclosing service in outlying districts.

Switch and Bus Insulators

Insulators for supporting outdoor disconnect switches, bus structures, and other high voltage equipment are described in a new 8-page leaflet announced by Westinghouse Electric and Manufacturing Company. They are designed for use on lines with system voltages between 7.5 and 69 kv.

Application and construction details are given. All styles and physical dimensions are shown by line drawings. Complete electrical data are listed for each style.

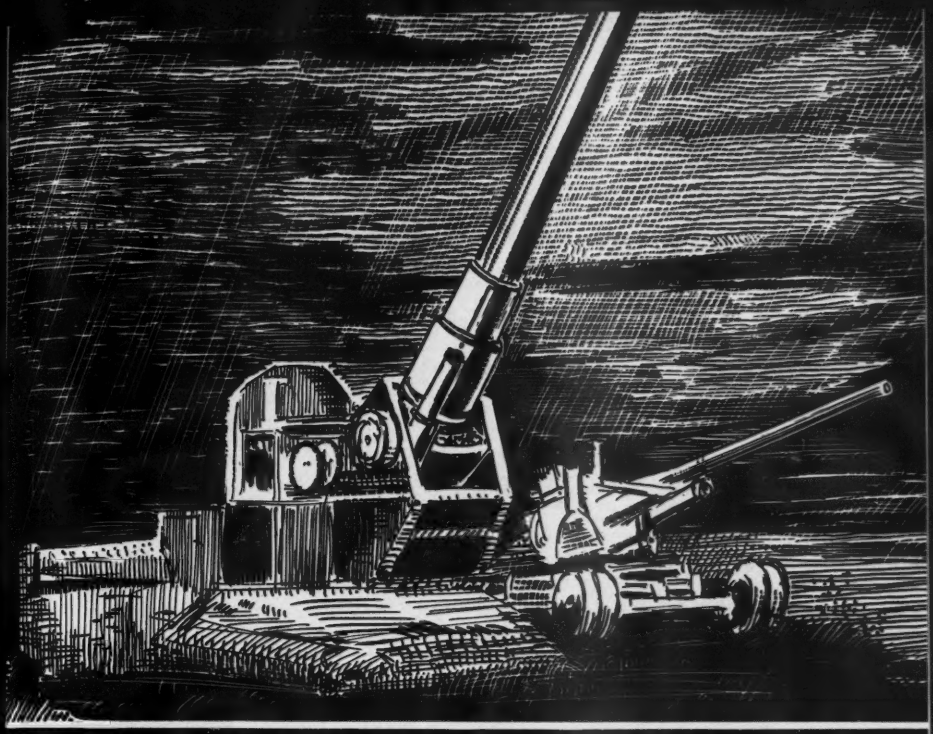
A copy of descriptive data 39-400 may be secured from department 7-N-20, Westinghouse Electric and Manufacturing Company, East Pittsburgh, Pa.

Air Conditioning Data

A new packaged sales presentation book for the "packaged" cooling line has been recently issued by the General Electric air conditioning and commercial refrigeration department, Bloomfield, N. J., for its dealers and distributor salesmen.

The 80-page book, printed in three colors and bound in a red zipper case, has many unusual features.

The book is the result of years of field work with salesmen, sales supervisors, sales managers, distributors and dealers in an endeavor to develop a better sales technique. In it are integrated the methods and presentations of the organization's most successful salesmen.



WAR ON WASTE
WITH
MERCOID

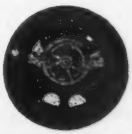
During the period of national emergency, one of the first essentials is to "war on waste". Time and materials must be conserved. Mercoid Controls particularly fit into this program, because they are designed to "war on waste". ● In the automatic heating field, they offer the best assurance of efficient and economical performance. ● Mercoid Controls represent more than sturdy construction. The manner of means used in accomplishing their purpose, are features of the utmost importance. Foremost is the hermetically sealed mercury switch. A cheaper switch could be used, but certainly not a better one. ● Mercoid Switches are immune to all of the deteriorating effects of dust, dirt and corrosion—a common cause of trouble. And as for long life, they last indefinitely without showing any indication of wear—this with a number of other outstanding features make Mercoid Controls a necessity in this emergency of "war on waste". Write for catalog containing complete information.

THE MERCOID CORPORATION • 4233 BELMONT AVENUE • CHICAGO, ILLINOIS

The following controls are highly recommended.

SENSATHERM

A room type thermostat combining beauty with mechanical perfection. Maintains an even room temperature without the aid of artificial acceleration. Operates on a total differential of one degree F., (plus or minus one half degree F.). Used for controlling automatic heating equipment, refrigeration or air conditioning equipment. Furnished standard for low voltage to operate with Mercoid Transformer-Relay. Directly handles 20 watts or less on 115 or 230 volts without a relay. Standard range 55-85° F. Other ranges available.



WARM AIR FURNACE CONTROLS

Type M-80 control illustrated, is a combination fan and limit control used on warm air furnaces. Limit switch prevents the furnace from overheating and the fan switch regulates the fan or blower. Equipped with lock type manual button for summer ventilating purposes. Also available as separate controls. Type M-51 is the limit control. Type M-53 is the fan or blower control and is provided with a lock type manual button for summer ventilating purposes.

TWO-STAGE SENSATHERM

This thermostat operates from two stages of temperature variations. Use on high-low gas or oil burners. When room temperatures are low, both circuits are closed and the gas burner operates at high fire. As the room temperature rises to the thermostat setting, the 1st stage circuit opens, causing the main port of gas valve to close. The temperature continues to rise, the 2nd stage circuit opens and the valve closes, cutting burner down to only the pilot flame.

A UNIQUE instrument, simulates in slow motion the action of lightning on a transmission line—actually lengthens the life of the wave from one ten-thousandth of a second to five or ten seconds. With it, Westinghouse engineers study lightning's effects on protective equipment being developed to improve your power distribution systems. This and other Westinghouse research achievements have made possible such outstanding improvements as the new porous-block Autovalve Lightning Arresters which handle both "hot" and "cold" lightning, and the completely self-protected transformers which give added protection to your lines.

Westinghouse activities in research, in the manufacture, distribution and application of apparatus, and in promoting the use of electricity, result in better service to you and a wider use of electricity by your customers. They have been made possible and are continually encouraged by your purchases of Westinghouse apparatus.

WESTINGHOUSE ELECTRIC & MANUFACTURING COMPANY, EAST PITTSBURGH, PA.

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"I checked up on Dodge. It's Dodge for me this time!"

OWNER OF LOW PRICED TRUCK 'B',
"I compared costs . . . It's a Job-Rated Dodge for me!"

OWNER OF DODGE ~~Job-Rated~~ TRUCK,
"My bank account proves that a Job-Rated Truck saves money! I'm going to get another Dodge!"

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. . and "Job-Rated" wins again!

. . . sure the swing's to Dodge *Job-Rated* Trucks! *Here's why:* A truck that fits the job is a better truck - - gives better performance - - costs less to operate - - lasts longer - - saves time - - saves money! And new Dodge *Job-Rated* Trucks are the best trucks ever built - - best Quality - - best Value. Compare them with *any* truck at *any* price! Be sure you get the most for your money!

LOOK AT Low Priced Truck 'A'

LOOK AT Low Priced Truck 'B'

LOOK AT LOW PRICED DODGE ~~Job-Rated~~ TRUCKS

AND LOOK AT THESE DODGE LOW PRICES

Chassis .. $500 (WITH COWL)
Chassis .. $595 (WITH CAB)
Pick-Ups $63
Panels .. $73
Stakes .. $74

Above prices are delivered at Detroit, Federal taxes included. Transportation, state and local taxes (if any) extra. All prices shown are for ½-ton except stake model which is for ¾-ton. 112 standard chassis and body models available.

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DEPEND ON DODGE *Job-Rated* TRUCKS

Job-Rated MEANS A TRUCK THAT FITS YOUR JOB!

TRIDENT

Interchangeability

MODERN INTERCHANGEABLE PARTS
IN AN 1899 TRIDENT WATER METER

The Story of a Sound Investment

TWO essential facts set the Trident Water Meter apart from all others, as a profitable investment, and as a dependable source of Water Works revenue.

First — this water meter was first produced in a form so basically correct, so fundamentally right for its purpose, that its basic design has never been essentially changed. That is to say, later improvements have not made older Trident Meters obsolete.

Second — every essential improvement in Disc Water Meters made in the last 40 years is found in the modern Trident Meter today . . .

— and can be incorporated in Tridents made as long as 40 years ago, by means of modern Trident interchangeable parts.

Think! Even in 1899, there were such "modern" Trident pioneering features as the Breakable Bottom, the Thrust Roller and the Snap-Joint Disc Chamber, which protect accuracy and reduce maintenance cost in Trident Water Meters today.

At first, as the initial million Tridents were produced, improvements (such as heat proof renewable bushings) were minor . . . but the basic design of the Trident Meter remained unchanged. New models did not supplant older ones.

Then, as the Trident millions swiftly mounted, Neptune pioneered in new ways to improve and protect meter accuracy and prolong life—still without the necessity of changing the basically correct design of the meter, without making old models obsolete.

The year 1919 saw the introduction of such further technical developments as the Trident Oil-Enclosed Gear Train. Screwless Registers were perfected in 1921-24; the 3-part Disc in the latter year; the Protective Sand Ring two years later; then in 1939 came the Thrust Roller Bearing Plate . . . all readily inserted into old Trident Meters.

Remember one thing — all this time the basic Trident Meter design has remained unchanged. In other words, Trident Meters of yesterday can logically be made "better than new", by the insertion of the interchangeable parts of TODAY. Interchangeability was, and is, the basic principle and policy of Trident Meter design.

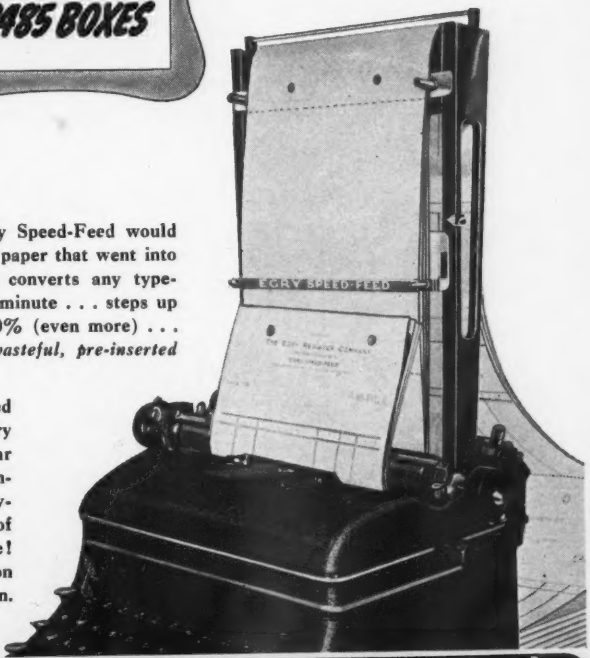
Today the Trident Meter remains, as it always has been, the best water meter on the market, if the testimony of more than 6 million made and sold (the great majority still in service) is a true criterion of value.

NEPTUNE METER COMPANY • 50 West 50th Street • NEW YORK CITY

Branch Offices in CHICAGO, SAN FRANCISCO, LOS ANGELES, PORTLAND, ORE., DENVER, DALLAS, KANSAS CITY, LOUISVILLE, ATLANTA, BOSTON.
Neptune Meters, Ltd., 345 Sorauren Avenue, Toronto, Canada.

You're right, young lady! The Egry Speed-Feed would have saved the 2485 boxes of carbon paper that went into the waste basket. The Speed-Feed converts any typewriter into a billing machine in one minute . . . steps up the output of typed forms per day 50% (even more) . . . *and eliminates the use of costly, wasteful, pre-inserted one-time carbon forms!*

Yes, a user of the Egry Speed-Feed and 50,000 five-part 8½" x 11" Egry Continuous Printed Forms per year saves 2485 boxes of carbon paper annually. In dollars and cents that saving will more than pay for the use of the Speed-Feed for a century or more! Literature on request. Demonstration in your own office without obligation. Address Dept. F-717.



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PROFESSIONAL DIRECTORY

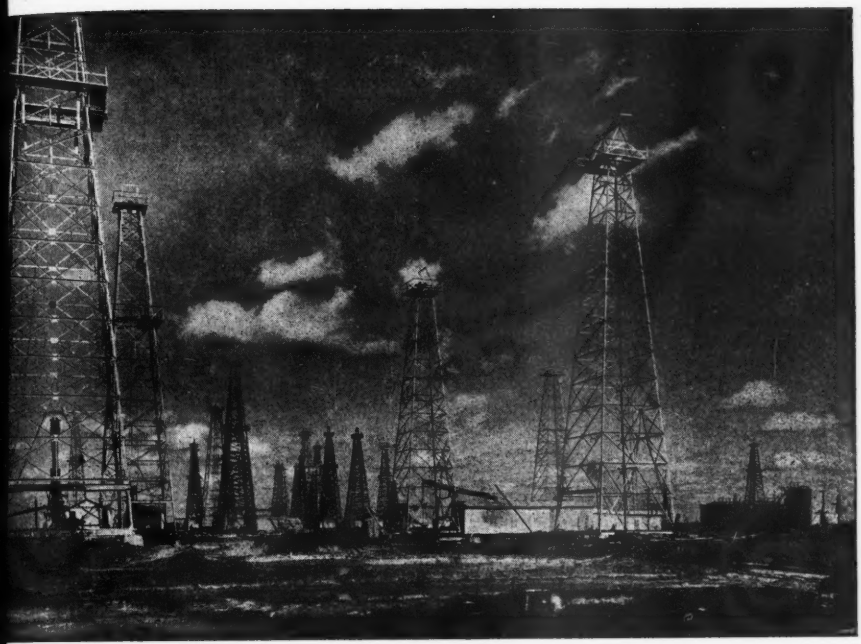
• This Directory is reserved for engineers, accountants, rate experts and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, design and construction.

PROFESSIONAL DIRECTORY (*continued*)

INDEX TO ADVERTISERS

[The Fortnightly lists below the advertisers in this issue for ready reference. Their products and services cover a wide range of utility needs.]

* Fortnightly advertisers not in this issue.



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HE is independent and proud, yet democratic and friendly. He is the envy of the rest of the world, and its hope. He is generous and tolerant and peace-loving—and withal the most powerful man in the world. He is the American workman.

His hands, accustomed to the feel of wrench and lever and gauge, may never have held a gun; his mind, trained to think in terms of tolerances as fine as 1/10,000 of an inch, may never have wrestled with a problem of military strategy; and yet he is the veteran of a thousand campaigns.

His campaigns began in the laboratories, and his prowess was proved in the test pits of American industry. His battles were waged on the factory floor and in the field. His victories have helped to make the citizens of the United States the most fortunate people in the world, and the U. S. the greatest nation on earth.

In the plants of the General Electric Company, working with General Electric scientists and engineers, this man, the American workman, has made giant generators to light whole cities, X-ray tubes to penetrate the mysteries of human flesh and metal castings, radio and television apparatus to project man's voice and image through space over the mysterious waves of the ether.

Today, in the gravest hour of world history, he is engaged in the greatest campaign of all. But there is serenity and confidence in his face, and the experience of a thousand campaigns behind him. He is sure of his own abilities, certain of his country's future. General Electric Company, Schenectady, N. Y.

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